

Appendix D:
Transcripts of Hearings on Proposed Water Commission Bill

REVIEW OF THE LAWS ESTABLISHING THE SWRCB'S PERMITTING AUTHORITY OVER APPROPRIATIONS OF
GROUNDWATER CLASSIFIED AS SUBTERRANEAN STREAMS AND THE SWRCB'S IMPLEMENTATION OF THOSE LAWS

Joseph L. Sax
January 19, 2002
(SWRCB Contract No. 0-076-300-0)

1 Room 327, Mills Building,
2 Tuesday, May 28th, 1912, 10 A.M.
3

4 THE CHAIRMAN. Gentlemen, we have asked you to come here to-
5 day to help us in this Water Bill which we have, after a good
6 deal of hard labor and careful and profound consideration, got
7 into the shape it is in now. We realize that there are many
8 things in it over which there can be controversy; and we real-
9 ize that there are many things in it which probably should be
10 changed. We want the help and aid and advice and comfort of all
11 the people of this State who are interested in such matters; and
12 therefore, we will be very glad to have you take the Bill and
13 tell us in what particulars, first, you disagree with it; and,
14 second, if there is anything in it you agree with we would be
15 very glad to hear that, but the former, of course, is the more
16 important--- the good things will take care of themselves and the
17 adverse criticism is what we are asking of you gentlemen who
18 are here to-day. What is your wish as to how we should proceed
19 with it--- take it up section by section and confine ourselves
20 to the sections as we take them up? Of course, we would be
21 glad to listen to your suggestions; changes in phraseology are
22 of minor importance. I would suggest that they be given the
23 least attention in the matter; it is the question of policy
24 which is of more importance than the mere question of phraseolo-
25 gy, although, of course, that is important.

26 Has anybody any suggestions to make in regard to the
27 procedure? If not, we will take the Bill up, then, section by
28 section.

29 Section 1-- You are familiar with that subject---
30 "Section 1. Subject to vested and existing rights, all water

1 "or the use thereof, including surplus and flood waters, may
2 "be appropriated for any useful or beneficial purpose as pro-
3 "vided by this act and not otherwise; provided, that no water
4 "or the use thereof for the generation of electricity, or elec-
5 "trical or other power, shall be appropriated for a longer per-
6 "iod than forty years."

7 Is there any objection to that forty? The United
8 States allow fifty years now. But that is a mere question of
9 secondary importance; we haven't settled on that yet.

10 Is there any objection to the policy of that section 1?
11 If there is, we would like to hear it.

12 MR. KEECH: Mr. Chairman, representing the water users of
13 San Bernardino, Riverside, and Los Angeles Counties, I would
14 say, that my only suggestion in this is that the Bill through-
15 out provides for determining and regulating uses for beneficial
16 purposes, and my examination of the Bill leads me to understand
17 that that means artificial beneficial purposes,-- some use by en-
18 tering upon the natural supply artificially and artificially
19 applying it; and I think there are two natural uses of it, of
20 what I might term underground waters, that are not covered by
21 the Bill-- that is, according to the decisions of our courts,
22 which have established the riparian law as far as it exists at
23 the present day. There is a natural use of the water ex jure
24 natura, as the courts say-- by percolation, infiltration,
25 and subirrigation in riparian lands; and also there is a nat-
26 ural use by subirrigation of all overlying lands that require no
27 action on the part of the land owner, that by its mere presence
28 furnishes a supply of water that he might otherwise use in an
29 artificial way, and that performs all the functions more cheap-
30 ly than it could be done by the artificial application.

1 This matter will go to the whole Bill, and therefore
2 I mention it.

3 Our landowners in the convention representing the three
4 counties down there ask this: What if we are making no use
5 whatever, what if our lands are subirrigated either by a stream
6 or underlying waters as defined in the Bill, and we do not
7 need to make any diversion, the water is there and furnishes
8 and supplies its own use?

9 Now, it seems this is not mentioned or considered,
10 and the Bill seems to provide for the utilization by artificial
11 means of all water, including these waters that are subirrigating
12 and naturally supplying their vegetation and crops with water.
13 I merely suggest this as their point of view: that the Bill
14 doesn't provide for it and it will come up probably for dis-
15 cussion under the different provisions.

16 THE CHAIRMAN. What is your objection, what is your suggestion
17 as to what the Bill should say in that regard?

18 MR. KEECH: It is easier to call attention to the fact of
19 its omission than it is to supply the proper provision. We did
20 not have time to go into that.

21 THE CHAIRMAN. What is the matter with your taking time to
22 consider it?

23 MR. KEECH: I think we should, somewhat should, I believe.
24 It could be worked out.

25 THE CHAIRMAN. With your permission, I will appoint you a com-
26 mittee of one to take that matter up and go into it within the
27 next few days.

28 MR. KEECH: Unfortunately, I do not get any salary, like your-
29 self.

30 THE CHAIRMAN. Neither do we.

1 MR. KEECH: I have to make my living.

2 THE CHAIRMAN. But you are representing people who are very
3 greatly interested in this matter. It is easy enough to pull
4 down, but we would like some constructive statesmanship in
5 this matter as well as destructive.

6 MR. KEECH: There are other things, I think, before this Bill
7 is finished, we will have them done; and they are willing
8 enough to appoint me a committee to go ahead, but meanwhile
9 where will I get the funds to buy the baby a shirt?

10 THE CHAIRMAN. Well, I am more interested in this particular
11 baby.

12 MR. SHORT. There is a suggestion in that section from which
13 I infer that it is the desire of the Commission to have the ap-
14 propriation of water, in a large sense, entirely under the ju-
15 risdiction of the Commission to be appointed under the Act.

16 THE CHAIRMAN. Why do you hold it down to "in a large sense"?

17 MR. SHORT. I say, I infer that.

18 THE CHAIRMAN. But why not in all senses?

19 MR. SHORT. But what I was going to suggest is that unless
20 there are exceptional matters in which I have no interest ex-
21 cept what anybody would have that is familiar with the subject,
22 it has always seemed to me to make an absolute rule in the
23 State that the appropriation of water, unless in compliance with
24 the Act, was unlawful, would be an imposition on all small and
25 temporary users of water. I think perhaps there could be some
26 language in the Bill that would permit of uses from the streams
27 that would not be any abuses, and still leave the Commission
28 in entire control of the main subject.

29 THE CHAIRMAN. We debated that at great length, and we could
30 find no avenue by which we could leave an opening there. It

1 would have to be so worded, to the best of my knowledge and
2 ability, that it would be open to great abuses. You have in
3 mind, for instance, a man who desires to go and dig a well and
4 take a little water out of the stream to water his stock with?

5 MR SHORT. Well, or he might want to irrigate a crop in a
6 mountain meadow from a stream, or do an indefinite number of
7 things-- he might want to run a little mill, or do anything,
8 and it would appear apparently that you would probably have a
9 law that you wouldn't enforce in a great many instances.

10 THE CHAIRMAN. Couldn't.

11 MR. CUTTLE. You couldn't characterize what he does as a crim-
12 inal offense if he would take that water without applying to
13 this Commission, only that he doesn't come within any law of
14 the State of California unless he does appropriate water un-
15 der the provisions of the Bill.

16 THE CHAIRMAN. That is it.

17 MR CUTTLE. It would be a matter I would want a serious dis-
18 cussion of; but it is always obnoxious to my view that a law,
19 whether it carries a penalty or not, should be so made that
20 everybody, as you say, proceeds contrary to law, whether any
21 penalty is imposed or not; and you would also understand that
22 whatever he chooses to do couldn't by any possibility give him
23 any rights, and it would impose a great deal of burden on the
24 Commission and a great deal of expense on the small users of
25 water, so that I am unable to see any corresponding benefit. That
26 is my whole idea about it.

27 THE CHAIRMAN. I see your point apparently; but the point is
28 that there is only a certain amount of water and finally all
29 that water will be used and should be used under the supervision
30 of the State as represented by this Commission or a commission

1 or bureau of some kind. Where it will finally end we do not
2 know yet; but under this provision the State authorities will
3 have cognizance of what water is used, and there is but one way
4 to do that: as the criminal law says, a man who does a certain
5 thing is guilty.

6 Now we come to Section 2, and right there there is going
7 to be trouble. By the way, the Conservation Commission does
8 not care who uses the water so long as it is used, either by
9 an appropriation or by a riparian proprietor or anybody else.
10 We realize fully that certain gentlemen say that this is entire-
11 ly unconstitutional; other laws have been unconstitutional, and
12 the Commission is so firmly of the opinion that this ought to
13 go into the Bill and that it is right that it has put it into
14 the Bill. We would like to hear from you about it?

15 "Riparian proprietors are, for the purposes of this
16 "act, hereby defined to be the owners of riparian lands. Ripar-
17 "ian land are, for the purposes of this act, defined hereby to
18 "be such lands, in continuous tracts or adjacent and contigu-
19 "ous subdivisions, which abut upon the banks of streams and
20 "are the property of the owners of the banks of said stream,
21 "and which naturally drain directly into the streams on the
22 "bank of which they abut. But riparian lands passing out of the
23 "ownership or riparian proprietors in tracts or subdivisions
24 "not abutting directly on the banks of streams to which they
25 "were riparian, or passing in such tracts or subdivisions from
26 "the ownership of one riparian proprietor to other ownership,
27 "shall thereupon cease to be considered to be riparian lands.
28 "And riparian lands not directly abutting on the banks of streams
29 "shall not be deemed or considered to be riparian lands by reas-
30 "on of becoming the property of riparian proprietors, and lands

1 "which have ceased to be riparian lands shall not thereafter
2 "be deemed to be riparian lands".

3 That we understand in general is the law is it is now.

4 "Riparian proprietors may, as riparian proprietors, take
5 "water from the stream to which their lands are riparian and
6 "conduct it only for useful and beneficial purposes, and only
7 "upon their riparian lands which are riparian to the streams
8 "from which they take said water. Provided, however, that
9 "such water, after being so conducted, or so much of said
10 "water as will naturally return to said stream, after being so
11 "used, shall be allowed to return to the stream. Provided,
12 "also, that each said riparian proprietor desiring so to take
13 " and use said water shall, within one year after having been
14 "notified by the State Water Commission so to do, or may, in
15 "his discretion, at any time prior to being so notified by the
16 "said Commission, file with the said Commission, in writing and
17 "under oath and upon blanks furnished by the said Commission,
18 "a statement showing the following things; The amount of wa-
19 "ter, measured in second feet at the point of diversion, he
20 "is already taking, by appropriation or otherwise, and using
21 "for a beneficial or useful purpose upon his said riparian
22 "lands; also the amount of water, measured in second feet at
23 "the point of diversion, he proposes to take and use, as a ri-
24 "parian proprietor, for a beneficial or useful purpose on his
25 "said riparian lands; also the source from which he proposes
26 "to take such water and the point of diversion from said
27 "source; also the particular beneficial use or purpose to which
28 "he proposes to put said water after diverting it; also the
29 "correct number of acres comprised in the riparian lands up-
30 "on which he proposes to conduct and use said water. The said

1 "notice by the said Commission shall be given by registered
2 "mail addressed to the last-known post-office address of the
3 "said riparian proprietor and also by publication once a week
4 "for ten consecutive weeks in a newspaper of general circula-
5 "tion, published in the county or counties in which said ri-
6 "parian lands are situated. Or, if there be no such newspapers
7 "published in said county or counties, then and in that case
8 "said notice shall be given by publication in the same manner
9 "in such newspaper published in the county next adjacent to
10 "such riparian lands. The said notice by publication may, in
11 "the discretion of the said Water Commission, be addressed in
12 "one notice, published as above, to each and all the riparian
13 "proprietors on any certain stream or branch thereof, or on any
14 "certain stream system or part thereof. But when said notice
15 "applies to such stream system it shall be published as above
16 "provided in each county in which there is situated such ripar-
17 "ian lands owned by the said riparian proprietors. If said
18 "statement of the said riparian proprietor be not filed with
19 "the State Water Commission within one year after said notice
20 "shall have been given as provided above, then and in that case
21 "said riparian proprietor shall be deemed to have forfeited and
22 "abandoned any right he, as riparian proprietor, may have had to
23 "the water, or the use thereof, in the stream or streams to
24 "which his lands are riparian and concerning which he has been
25 "notified by the said Commission to file his said statement.
26 "If, however, the riparian proprietor shall, either of his own
27 "motion or in pursuance of the said notice from the said Com-
28 "mission, file said statement as above specified and required,
29 "then he shall, within four years from the date of filing said
30 "statement with the said Commission, complete the putting of

1 "the said water upon his said riparian lands and to the said
2 "beneficial use and purpose, but in quantity not exceeding the
3 "amount set forth in said statement to said Commission and only
4 "for the beneficial use or purpose specified in said statement.
5 "But if any riparian proprietor shall neglect or refuse to com-
6 "plete the putting of said water upon his said riparian lands
7 "and to the said beneficial use or purpose within the said four
8 "year, then and in that case the said riparian proprietor
9 "shall be deemed to have forfeited and abandoned any right
10 "which, as riparian proprietor, he may have had to that port-
11 "ion of the said water he had not put upon his said lands for
12 "the said useful or beneficial purpose. But no riparian pro-
13 "prietor shall hereunder conduct upon his riparian lands more
14 "of the unappropriated water of the stream to which his lands
15 "are riparian than a proportionate share thereof calculated
16 "from the relative acreage owned by him on said stream as com-
17 "pared to the total acreage of riparian lands on said stream."

18 MR. CUTTLE. Calculated from the irrigable acreage, it would
19 be. He wouldn't have the rights to the benefits of water if
20 a great portion of his land was mountainous.

21 THE CHAIRMAN. That isn't riparian land.

22 MR. CUTTLE. It might be.

23 MR. KEECH. I think the Supreme Court's decision, I think this
24 is an attempt to follow that, I think it says "Irrigable lands".

25 MR. SHORT. According to the definition of the Supreme Court,
26 they are lands within the water-shed or contiguous to it for
27 the purpose of being susceptible to beneficial irrigation.

28 THE CHAIRMAN. We had in our mind the riparian owner might
29 want to take the waters out for other than irrigable purposes;
30 why shouldn't he be allowed to?

1 MR. SHORT. Do I understand that the idea of the Board would
2 be to prohibit any other use than for irrigation?

3 THE CHAIRMAN. No.

4 MR CUTTLE. No, but it has to be made under separate appro-
5 priation; the water has to be appropriated for each separate
6 use.

7 THE CHAIRMAN. The riparian proprietors, we had in mind,
8 should have the right to use the waters for any purpose he
9 wanted to take it and use it on his land; in other words, we
10 didn't want to run up against the riparian proprietor any more
11 than we had to.

12 MR SHORT. There are one or two things I want to speak about
13 in that section.

14 THE CHAIRMAN. (continuing reading); "And any riparian pro-
15 "prietor who, having conducted water as herein provided upon
16 "his riparian lands shall neglect, refuse or cease, for a per-
17 "iod of three successive years, to put said water, or any por-
18 "tion thereof, to the beneficial use or purpose set forth in
19 "his said statement to the said Commission, shall be deemed to
20 "have forfeited and abandoned any right he may have had as rip-
21 "arian proprietor to such portion of said water as he may have
22 "refused, neglected or ceased to have put to such beneficial
23 "use or purpose. And the State Water Commission is hereby
24 "given the power and authority and is hereby directed and au-
25 "thorized to bring the necessary suit or other proceeding in
26 "the Superior Court of the County in which are situated for the
27 "purpose of judicially declaring such abandonment and forfeiture
28 "as are in this act mentioned, and to carry such suit or other
29 "proceeding to final settlement in the courts of last resort."

30 Now, fire away.

1 MR SHORT. There is one clause there that I think would be con-
2 trary to the desires of the Commission, the way it is worded;
3 that is this: "But riparian lands passing out"--

4 THE CHAIRMAN. (Intg.) Where is that, what page and line?

5 MR SHORT. On page 1, line 16, beginning with the words I have
6 just read, "But riparian lands passing out of the ownership of
7 "riparian proprietors in tracts or subdivisions not abutting
8 "directly on the banks of streams to which they were riparian,
9 "or passing in such tracts or subdivisions from the ownership
10 "of one riparian proprietor to other ownership, shall thereupon
11 "cease to be considered to be riparian lands."

12 The effect of that would be to deprive subdivisions where
13 they ceased to abut; apparently where they do not abut on any
14 stream or any bank of a stream they would not have any rights.
15 The practice has been--- and it has been affirmed by the
16 Supreme Court--- that so long as the rights of way and the right
17 to use the water were conveyed with the land, that that sub-
18 division of land could use the water. Of course, that sub-
19 division of land is in no position to object to any loss of nat-
20 ural benefits. We will take an instance where we will say a ri-
21 parian owner would divide up a forty or fifty acre tract of
22 land and sell that tract, and he would sell the right to the buy-
23 er to use the water, we will say, in a ditch. This land wouldn't
24 abut a stream and wouldn't fall within the provisions of the
25 act, but under the act he would be deprived of using the water,
26 which the Commission does not want to do.

27 THE CHAIRMAN. Just exactly. We considered this language didn't
28 abrogate that act.

29 MR. SHORT. It would come so near it I wouldn't leave it that
30 way.

1 THE CHAIRMAN. Well, it ceases to be riparian land, but that
2 wouldn't say anything about the right of the owner to use the
3 water on it which has been conveyed to him by a previous ri-
4 parian owner.

5 MR. SHORT. But suppose, if this act is passed, a man should
6 want to subdivide and sell off his land and convey with it the
7 right to the use of the water; under this act you at least
8 throw great doubt as to whether that can be done or not.

9 THE CHAIRMAN. No, there is a subsequent clause in here that
10 says that the riparian owner shall do certain things to get his
11 water; if he does that as specified, he has the right.

12 MR. SHORT. Yes; but suppose he has not used the water, and
13 suppose nobody appropriates it and he wants to convey it?

14 THE CHAIRMAN. Yes, we agree with you on that thoroughly. In
15 this act there is a provision that he shall file with the Com-
16 mission his intention within one year after the notice is given
17 as provided in the act; and that within four years after that
18 he shall complete the putting of the said water upon his ri-
19 parian lands.

20 MR. SHORT. Here is a clause which would have a certain effect
21 which I do not think is desired. It is this-- it is top of
22 page 4, line 2: "But no riparian proprietor shall hereunder
23 "conduct upon his riparian lands more of the unappropriated
24 "water of the stream to which his lands are riparian than a pro-
25 "portinnate share thereof calculated from the relative acreage
26 "owned by him on said stream as compared to the total acreage
27 "of riparian lands on said streams." The natural effect of
28 that would be that a riparian proprietor would be prohibited
29 from availing himself even of the privilege of appropriation,
30 that is to say, he can take no more water on his lands.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

THE CHAIRMAN. As riparian proprietor.

MR SHORT. But it doesn't say that; it says, "no riparian proprietor shall hereunder conduct his riparian lands more of the unappropriated water of the stream to which his lands are riparian than a proportionate share thereof calculated from the relative acreage owned by him on said stream as compared to the total acreage of riparian lands on said streams."

THE CHAIRMAN. But not as a riparian proprietor, but as an appropriator.

MR SHORT. Of course, if he shouldn't have the right to do it under the riparian right, it might be understood as appropriation, he might take it.

THE CHAIRMAN. (Reading): "No riparian proprietor shall".

MR SHORT. Under his riparian right, I should say.

THE CHAIRMAN. Right. I think it is all right as it is.

..... There is no provision, apparently, provided in that clause, whereby there is any priority of riparian ownership, or riparian claim.

THE CHAIRMAN. We do not think there is; is there such a thing as riparian ownership or riparian claims?

MR KEECH: For domestic uses.

THE CHAIRMAN. Yes. I mean in a very broad sense.

..... What I had in mind is all the lands along the borders of a stream might not be taken up within a period of twenty years. That being the case, would the prior riparianowner have precedence to the water over the appropriator?

THE CHAIRMAN. I am free to say that although I have made a great study of riparian rights of lands, there are a whole lot of things I do not know. What do you think about that, gentlemen?

1 MR. SHORT. That is to say, that the Bill ought to preserve
2 the priority in that regard?

3 MR. CHAIRMAN. That is the subject-matter.

4 MR. SHORT. I am always for doing that.

5 MR. CHAIRMAN. Is it necessary? Are not riparian rights all
6 on the same basis except as Mr. Keech suggested, for domestic
7 purposes? That is taken care of in another place here.

8 MR. KEECH. I understand they are co-equal; the riparian
9 proprietors are all on the same basis themselves except as to
10 the domestic uses, in which the upper riparian proprietor may
11 exhaust the entire stream.

12 THE CHAIRMAN. That is what we understood.

13 ----- I didn't quite understand it that way.

14 Mr. Keech says that the upper riparian owner claiming the right
15 to use all the water could put it to any use which he sees fit,
16 to the detriment of the riparian owners below. I may be mis-
17 informed on that. I have in mind some question that has been
18 involved.

19 THE CHAIRMAN. You have not been misinformed. We have been in-
20 formed that all riparian owners are co-equal and each one of
21 them has his right to his property, and to his proportionate
22 amount of water, and that the fellow above or below can't
23 touch that.

24 MR. SHORT. That isn't based on acreage, of course, but on
25 conditions; the upper owner cannot take more than his equitable;
26 but he may take all of it for certain uses, and also he may
27 take it first from the very nature of things.

28 MR. POTTER. I understand the law is that the riparian rights
29 go with the land-- no question about that. The upper riparian
30 owner may use such water as is necessary for the beneficial use

1 to which he puts it, provided he turns it back into the same
2 stream. The point that the gentleman makes, as contemplated
3 by this law, that an upper riparian owner may appropriate it and
4 make use of the entire amount of the stream, for example, and
5 asking where the law of riparian proprietor comes in if he buys
6 land which included the same stream, he asks whether or not
7 under this law the upper riparian owner can so far appropriate
8 the use of the water as to completely shut off the lower riparian
9 owner-- that is the point.

10 Yes.

11 MR. CHAIRMAN. The intention of this Bill was to follow as
12 nearly as possible the riparian law as laid down by the Supreme
13 Court of this State; however, compelling the riparian owner
14 to use the water. Furthermore, we have no interest in it at
15 all except to see that the water is used under the best possible
16 conditions with due equity toward all to have any rights of any
17 description. It may be that the gentleman's point is well
18 taken, namely: does this Bill as now framed permit one riparian
19 owner to avail himself of waters in a stream to the detriment
20 of the fellow below?

21 MR. BAUMGARTNER. The Bill distinctly says that it can only
22 be appropriated in proportion to the acreage.

23 THE CHAIRMAN. Exactly.

24 MR. Will you take that up and study it up a
25 little?

26 We will look into it further.

27 THE CHAIRMAN. As far as this act is concerned, we want it ap-
28 plied to the best interests of all, not following blindly the
29 precedent and authority of the Supreme Court, because that
30 even may be overridden by the Legislature.

1 MR. SHORT. It seems to me that where it is being provided
2 that a riparian proprietor must give notice testifying the uses
3 and stating that he is going to put the water on his land to
4 beneficial use within a certain period of time, that the Com-
5 mission ought to have the power in a case where the water was
6 not applied and put to good uses and where due diligence was not
7 shown or where there was the existence of a lack of demand for
8 the water by the proprietor, the Commission ought to have the
9 power to control that, and in cases where necessary extend the
10 time.

11 MR. CHAIRMAN. We put it at a time that we thought long enough.

12 MR. SHORT: It would strike me this way: That in many in-
13 stances, the time would be unnecessarily long if applied at all,
14 and we have got to assume that they will; and in other instances
15 it would be altogether too short and that, for instance, suppose
16 a man had sixty acres of riparian land; he could very easily tell
17 what he was going to do with it in a year or two.

18 THE CHAIRMAN. Put the maximum time long enough and allow the
19 Commission to give him time on that with the power to extend up
20 to that maximum length of time.

21 MR. SHORT. Would have the power to extend the time not exceed-
22 ing so many years. In passing over that section, I think per-
23 haps I ought to add that I only made the suggestions that I
24 thought were all necessary and would be agreed to. Many, of
25 course, think that Legislation should be directed to the ex-
26 peditious acquisition and determination of riparian owners and
27 such action be taken. I don't believe this bill will accomplish
28 that purpose.

29 THE CHAIRMAN. Would you kindly give us the benefit of your
30 ideas in writing as to how the law should be on that? That is

1 what we are after.

2 MR. SHORT. Yes, sir.

3 MR. BAUMGARTNER. Before leaving that Section 2--I just want to
4 say a word. You will recall that I have always, in a general way
5 felt that this Section should be so drawn as to preserve in-
6 violable the rights of the land regardless of ownership.

7 MR. CHAIRMAN. We do that.

8 MR. BAUMGARTNER. But it appears to me that the point made by
9 Mr. Short in regard to the Sections and in regard to the Sub-
10 divisions, as presented by him, I always felt that that was wrong.

11 THE CHAIRMAN. That is the law now.

12 MR. BAUMGARTNER: It steill seems to me to mix that up.

13 MR. SHORT. In its present form, I think it will limit it;
14 I do not think that is the intention but I think that is the
15 clear effect of it.

16 MR. POTTER: Do I understand that the present object of the
17 bill is to affirm by statute that a riparian owner, by his divest-
18 ing himself of a portion of his land not adjacent to the
19 stream takes away the riparian right of that; if he owns a
20 hundred acres bordering on a stream and sells fifty acres to some
21 person who wants to use fifty acres, that the use of the water
22 for those fifty acres touching the stream, would his riparian
23 rights be gone?

24 MR. CHAIRMAN. Yes.

25 MR. POTTER. That holding of the Supreme Court has been very
26 seriously criticised in other states.

27 THE CHAIRMAN. In this state also.

28 MR. POTTER: Yes in this state also it is a Saction that
29 would stand a good deal of criticism.

30 I would like to ask how the juris-
diction of the Commission over present riparian ownerships would

1 affect the time in which those riparian owners have the right to
2 appropriate, or rather use that water. As I understand the matt-
3 er, the riparian owners come under the jurisdiction of the Com-
4 mission; they would have five years in which to appropriate and
5 use the water. I don't know whether that is an objection or not.

6 THE CHAIRMAN. It is a time limit, we have had to put in a
7 time limit.

8 MR. LOMBARD: Referring to the owner in the foothills not ad-
9 jacent to the stream: Do I understand the bill to say that the
10 riparian owner must come before the Commission and establish his
11 right to the entire one hundred acres, and with that he can dis-
12 pose of fifty acres next to the stream but with that will go on
13 his rights?

14 THE CHAIRMAN. The whole works.

15 MR. WEILL: In regard to the riparian right, in the matter of
16 facilitating the determination of what the value of the ri-
17 parianright, in case it is put to public use, your idea is to
18 facilitate the power of eminent domain, is it not?

19 MR. SHORT: Yes.

20 MR. WEILL: Would you then have any method under your proposi-
21 tion for the taking of riparian rights for private use?

22 MR. SHORT: Well, I have always doubted whether quantities of
23 water in this state shouldn't be made to be regarded for public
24 use regardless of the number of persons using it.

25 THE CHAIRMAN: Anything further in regard to Section 2--?

26 MR. KEECH: I am requested by my committee to suggest that, as
27 to the lines between 15 to 21 on page 4-- " And the State Water
28 "Commission is hereby given the power and authority and is here-
29 by directed and authorized to bring the necessary suit or other
30 "proceeding in the Superior Court of the County in which are
"situated for the purpose of judicially declaring such abandon-

1 "ment and forfeiture as are in this act mentioned, and to carry
2 "such suit or other proceeding to final settlement in the courts
3 "of last resort," that that should be stricken out, for this
4 reason: first, it would make the Commission in that action a
5 litigant; it would make it pass from a judicial attitude to a
6 partisan attitude to take up the ougdgel against the then riparian
7 claimants and using the power of the State to judicially determine
8 and terminate their rights, in some instances; secondly, that it
9 would force attention and determination by judicial processes
10 of all vested rights in the stream. They think that would, as
11 Judge Short suggested, cause an amount of litigation to which
12 the present is but a shadow, and that it is unnecessary. Their
13 view is that the Commission should remain an independent judicial
14 body with powers and the duty to investigate and determine fairly
15 and impartially as to all of these facts and to make such find-
16 ing, upon which they would act themselves and upon which they
17 would grant licenses; and then when it came to a question of those
18 rights, if their decision was not accepted as final in the
19 matter, it could be litigated by the parties themselves without
20 disturbing the judicial attitude of the Commission in any way or
21 rendering any more extended litigation than was necessary, and
22 leaving their findings prima facie as already provided, and would
23 have such a legal and moral force with the courts that they would
24 be more inclined to accept anything than a governmental im-
25 partial body and much more reliable than the special pleaders
26 that are hired by water companies to litigate; and they think
27 that that would be immensely more conducive to a peaceful,
28 satisfactory solution of these difficulties and-- to eliminate
29 that, strike it out and you will have the act as the opinion
30 of an impartial and eminent tribunal.

1 My people are very seriously opposed to the present form of it.
2 Of course they might represent, they could represent the power
3 of the State.

4 As I have said, my clients object very seriously to the
5 Commission entering the courts as litigating bodies backed by
6 the State.

7 Another thing, we think that this notice should be pro-
8 vided for at once, that you should give notice within six
9 months or a year after this Act shall take effect.

10 MR. WEILL. There is one State legislature that passed an Act
11 similar to this here, Nebraska.

12 THE CHAIRMAN. Giving the Commission the power to go into
13 the courts?

14 MR. WEILL. The duty to go into the courts and have a forfei-
15 ture declared of all abandoned rights. Of course, that is to
16 be passed on later on.

17 THE CHAIRMAN. We have no right to assume that, as a Water
18 Commission, just somebody representing the State.

19 We will now take up Section 3-- "Water or the use of
20 "water which has heretofore been appropriated, or which shall
21 "hereafter be appropriated, or which has been acquired under
22 "riparian proprietorship, or which shall hereafter be ac-
23 "quired under riparian proprietorship, for one specific purpose,
24 "shall not be deemed to be appropriated or acquired for any
25 "other or different purpose, except under a separate and dis-
26 "tinct appropriation therefore made as provided in this act.
27 " And any person, firm, association or corporation applying for
28 "a License to appropriate water or the use of water shall state
29 "in the application for said license the specific use to which
30 "it is proposed to put such water or the use thereof. But no

1 "appropriation shall be made for more than one beneficial pur-
2 "pose in any one appropriation."

3 MR. SHORT. Does that mean that it couldn't be appropriated
4 for those purposes?

5 THE CHAIRMAN. Not at all. But there shall be an appropri-
6 tion for one of two purposes.

7 MR. SHORT. Why?

8 THE CHAIRMAN. Doesn't that man make application for water
9 for irrigation purposes or for power?

10 MR. SHORT. The law has worked very beneficially in this
11 State, that water appropriated for one beneficial purpose can
12 be devoted to another. Of course, if you didn't want to leave
13 it devoted to another purpose you must state so; but to say
14 that a man having possessed himself under the law of the right
15 of beneficial uses of water, and if he didn't somebody else
16 could come in and he would lose that right, I very much doubt
17 the wisdom of it. He ought to have the right, so long as it is
18 put to beneficial use. For instance, in the mining rights--
19 you are familiar with that-- the appropriation having been
20 largely turned into irrigation later, and no provision had ex-
21 isted relative to that, and someone else could come in and ap-
22 propriate the water, I think that would work an injustice.

23 THE CHAIRMAN. We are of the opinion that the man who appro-
24 priates water for use should say what he is going to use it
25 for; that the interests of the public are now so great and
26 will be from now on and in the future that it will become more
27 apparent that from now on the appropriator should state the
28 exact purpose for which he appropriates water.

29 THE CHAIRMAN. Section 4 (a): "For the purposes of carrying
30

1 "out the provisions of this act a state water commission con-
2 "sisting of five persons is hereby created and established.
3 "Three members of said commission shall be appointed by the gov-
4 "ernor for the term of four years and shall consist of one en-
5 "gineer, one lawyer, one business man; provided, however, that
6 "of the members first appointed one shall be appointed to hold
7 "office until the first day of January, nineteen hundred and
8 "....., one until the first day of January, ninteen hundred
9 "hundred and, and one until the first day of January,
10 "ninetsen hundred and..... The governor and state engineer
11 "are hereby made ex officio members of the said commission in
12 "addition to three members appointed by the governor. The com-
13 "missioners shall elect one of their number president of the
14 "commission. The appointed members of said commission shall re-
15 "ceive as compensation for services rendered by them as said
16 "members the sum of..... per day for each day's service
17 "actually rendered and the total compensation of any one member
18 "shall not exceed \$5,000 per annum.

19 The criticism has been made in regard to that reading that
20 you may lose the services of men who are eminently qualified by
21 reason of other abilities, and you may lose them from serving
22 on the board. I don't think the commission is entirely set-
23 tled on that phase of the situation; it may be well to leave
24 the matter to the governor, the appointing power, as to who
25 shall be members of the Commission. The Commission has thought
26 very strongly that those commissions are of so much importance
27 and that men should give their whole thought to them that the
28 commissioners should receive a good big salary, but that is a
29 matter of policy which you have to go up against the legislat-
30 ure with, and it is very hard to wring appropriations from

1 legislatures and the governors, as I know.

2 "(b) Whenever a vacancy in the state water commission
3 "shall occur, the governor shall forthwith appoint a qualified
4 "person to fill the same for the unexpired term. The legislature ,
5 "by a two-thirds vote of all members elected to each house,
6 "or the governor, may remove any one or more of said commission-
7 "ers from office for dereliction of duty or corruption or in-
8 "competency (provide for sworn charges and public hearing).

9 "The commission shall have a seal bearing the following
10 "inscription: 'Water Commission State of California'. The seal
11 "shall be affixed to all authentications of copies of records
12 "and to such other instruments as the commission shall direct.
13 "All courts shall take judicial notice of said seal."

14 There is a lot of stuff in there that is of minor im-
15 portance and will probably be reconsidered by the Commission.
16 That can be amended at some future time.

17 MR. KEECH: Mr. Chairman, the committee of irrigators whom I
18 represent was unanimously of the opinion that there ought to
19 be at least three commissions of three members each for the
20 southern, central and northern portions of the State; that the
21 State was so extended, the work involved so great in detail and
22 importance, and the differentiations of climate and water con-
23 ditions so marked, that there should be, as there are three
24 places where the Supreme Court sits, three District Courts of
25 Appeal, that there should be at least three commission courts;
26 and they were very urgent with regard to that.

27 THE CHAIRMAN. That, of course, you know, would require a con-
28 stitutional amendment.

29 MR. KEECH. They were of the opinion that if that were the
30 case that was the most advisable method of getting at it; and

1 as that had been suggested by the chair, I wish to state their
2 view. A constitutional amendment has been carried in this
3 State for the protection of game; and it is their view that
4 their water rights are of inestimably greater value; that the
5 southern portion of the State has practically every drop of
6 water appropriated; and not only that, but they have the under-
7 ground water fully or largely explored and subjected to use,
8 there can be no question as to the way they have utilized wa-
9 ter, and they prefer very much to be left where they are, or
10 to be left with an independent system rather than to be tied
11 up. They realize the conditions in northern California; they
12 realize that they are entirely different. One who rides down
13 the Sacramento Valley, as I did coming here, or who rides up
14 the San Joaquin Valley, as I have recently, must be impressed
15 with the great difference in conditions, the absolutely reverse
16 conditions:-- down there the water is all utilized; and here
17 there are millions and millions of gallons-- cubic feet per
18 second,--- running to waste.

19 MR. WEILL. Only in Winter time; you don't see many millions
20 running to waste in California.

21 MR. KEECH. If the Sacramento River isn't navigable from here
22 to Sacramento, I am very much mistaken; and if it is not of much
23 more value for irrigation, if it cannot be utilized to better
24 advantage for irrigation than to run a few steamboats, then I
25 am much mistaken.

26 We do not want to be tied up; we are in favor of a
27 constitutional amendment; and we think we are as worthy as the
28 birds are of protection.

29 MR. WEILL. We would have one member of the Board appointed for
30

1 each division and meet centrally at Sacramento three times a
2 year, or one time in each division.

3 MR. KEECH. Our committee thinks it required the attention of
4 three good men; they want them all on the job. But the work
5 contemplated by this section can't be accomplished by three men
6 in a lifetime, if they go all over this State-- if they would
7 remain long enough on the Santa Ana River, it would take them
8 ten years right there on that job.

9 MR. LOMBARD. Isn't there provision for employing experts,
10 and so forth?

11 THE CHAIRMAN. Yes, certainly. Then your suggestion is to
12 multiply commissions. My opinion is to get less commissions,
13 that this thing could be settled under one bureau center.

14 MR. SHORT. It has been the unanimous opinion in this State we
15 shall have less, and in the unanimous procedure we have had
16 more.

17 THE CHAIRMAN. Sure. I am guilty.

18 MR. LOMBARD. Three men don't have to do it.

19 Mr. Keech. The courts will. Gentlemen, a certain amount of
20 attention has to be given to each case in order to arrive at a
21 decision of the case worth anything; that has been the exper-
22 ience of the courts for generations and centuries, and that is
23 the way this work has got to be handled. There is a Superior
24 Court for every county in the State; the City and County of
25 San Francisco has fourteen departments and we have as many in
26 Los Angeles; you have in the District Court of Appeal three de-
27 partments and three Judges in each court; and you have seven
28 Judges in the Supreme Court, and they are dealing it out, they
29 are handing out decisions on single cases, they hand a single
30 case out to each Judge and have him report on it and have him

1 draw up his conclusions, and they take it and go over it and
2 investigate it and approve it or disapprove it, as the case may
3 be. If you think it would be effective with three men in
4 this instance, go ahead and do it.

5 MR. WEILL. You have to make a beginning some place; if you
6 want more men later on, go to the legislature later on.

7 THE CHAIRMAN. Section 5, if everybody is through with Sec-
8 tion 4.

9 Five is an important section, gentlemen, and I would
10 ask you to follow it closely, please:

11 "Section 5-- All water or the use of water which has been
12 "heretofore appropriated and which has not been put, or which
13 "has ceased to be put, or which may hereafter cease to be put,
14 "or which may hereafter be appropriated and cease to be put, to
15 "some useful or beneficial purpose, or which is not now in
16 "process of being put to useful purpose or beneficial use as
17 "provided in this act, with due diligence in proportion to the
18 "magnitude of the work necessary properly to utilize for the
19 "purpose of such appropriation such water or such use of water,
20 "is hereby declared to be unappropriated. And the state water
21 "commission is hereby authorized, empowered and directed to
22 "bring the necessary suits or other proceedings to have such
23 "water or the use thereof judicially determined to be unap-
24 "propriated, as is in this section the same is declared to be un-
25 "appropriated, and to carry such suit or proceeding to final ad-
26 "judication in the courts of last resort. Such suits or pro-
27 "ceedings shall be brought by the said commission in the Su-
28 "perior Court of the county or counties in which said water is
29 "situated."

30 The law now declares and has declared appropriations

1 to be null and void unless the water under the appropriation is
2 put to beneficial uses; but there are a lot of fellows with
3 attorneys who have put a lot of water in cold storage, not for
4 their immediate use or for beneficial uses, but they will not
5 permit anyone else to use it; and there should lodge some-
6 where, either with this commission or with some authorities,
7 the power to have that water used for beneficial purposes and
8 have their appropriation or permit determined to be null and
9 void; otherwise, the cold storage process will continue as it
10 has it the past.

11 MR. WEILL. What is the need of declaring a forfeiture when
12 the Commission has a right to grant a license for the water?
13 Isn't that sufficient?

14 THE CHAIRMAN. No.

15 MR. WEILL. After the license has been granted to another par-
16 ty, under other circumstances, you are making it obligatory on
17 all streams and declaring a forfeiture of all unappropriated
18 rights. It seems to me that the general provisions of this
19 Act have a general effect.

20 THE CHAIRMAN. The idea of the Commission, the idea we had was
21 that there ought to be some power somewhere in the State to go
22 out and make the provision, bring the provisions to a focus and
23 enforce the provisions of the law. It may be that it lies sim-
24 ply in that word "directed" that the Commission shall have the
25 power to do it in its discretion.

26 MR. WEILL. Wouldn't that make it discriminatory and leave the
27 Commission under suspicion of playing favorites?

28 THE CHAIRMAN. Isn't that so with regard to every district
29 attorney in this State?

30 MR. WEILL. Everything that could be done by general laws

1 should be done.

2 THE CHAIRMAN. I think you are right, and it may be that that
3 is just the thing that ought to be done.

4 MR. WEILL. I think that is an unfortunate provision; I thought
5 of that Nebraska law, that was the first state that actually
6 put that on the statute books; it is simply multiplying legis-
7 lation and it is detracting from the effect of the decision of
8 the Commission.

9 THE CHAIRMAN. Put that in writing, please.

10 (Mr. Weill, Mr. Short and Mr. Keech at this point dis-
11 cussed the section; also discussed the legal procedure in the
12 Supreme Court.)

13 MR. KEECH. I am satisfied with the court myself; I think that
14 is the reason you should have three commissions; its functions
15 are to represent all the different interests of the State.

16 MR. BAUMGARTNER. Do you think it is possible or at all prac-
17 ticable that three commissions exist? Would the idea be that
18 the three commissions act under one law, or be a separate law
19 each unto itself?

20 MR. KEECH. It would be perfectly practicable; the question is
21 whether it would be politic.

22 MR. BAUMGARTNER. Is it not possible the other way?

23 MR. KEECH. It would be just as practicable as the three Dis-
24 trict Courts of Appeal.

25 MR. BAUMGARTNER. They would be under the same law?

26 MR. KEECH. Exactly. This is simply a question of ability of
27 three men to do the work or nine men.

28 MR. BAUMGARTNER. I understood it to be the purpose of the
29 three commissions to administer the law differently in dif-
30 ferent cases as the different courts in different parts of the

1 State.

2 MR. KEECH. That would be more simple.

3 MR. SHORT. If the water is all appropriated, what do you want
4 your Commission to do?.

5 MR. KEECH. We do not need any commission in southern Califor-
6 nia; but we are in the same State with you and we want to make
7 something of the whole State; we are desirous of meeting you
8 as far as we can if we can do any good to you without injustice
9 to ourselves.

10 I want to say, further, that this embraces these un-
11 derground waters, their natural use, and absolutely destroys
12 the value of that.

13 MR. WEILL. I think there would be no litigation there; we
14 could recall any decision that was not constitutional.

15 MR..... After hearing all these remarks on
16 the law, I feel inclined to appeal for a conciliation board as
17 well as a commission. Considering everything, I think we are
18 only increasing the machinery for the lawyers to make fees, and
19 I think we want to decrease that.

20 MR CHAIRMAN. That is what this Commission was intended to do.

21 MR. CUTTLE. There is one member in the south who is opposed to
22 this water commission plan; but he says "If you will just name
23 this an arbitration board I am agreeable to the whole thing,
24 just change its name."

25 THE CHAIRMAN. The only trouble in that is-- I am speaking for
26 myself personally, non-officially, as I have often mentioned to
27 Mr. Cuttle-- I first proposed a year ago that the State should
28 have the right of intervening in any suit; I was overruled in
29 that, that it wasn't good policy. But I personally am of the
30 opinion that there ought to be some representative public body

1 or some way that the public should be given a voice in the set-
2 tlement of these things, because that is of so much importance
3 to everybody, not only this generation, but all future genera-
4 tions-- the matter is so important that it ought not be allow-
5 ed to be settled without the public in some way being represent-
6 ed.

7 MR. WEILL. Why not let the Commission represent the public in
8 the matter, the decision of the Commission?

9 THE CHAIRMAN. We want some power somewhere.

10 MR CUTTLE. Someone who feels that he is deprived of a right
11 can take it into court.

12 MR WEILL. Anybody who is contest with the Commission can go
13 into court.

14 MR. LANE. I believe that this Section 5, if it were made pre-
15 ventive rather than mandatory, it would be best.

16 THE CHAIRMAN. Strike out the word "directed"?

17 MR. LANE. Give the State the power to step in and exercise
18 its discretion.

19 MR. TROWBRIDGE, I have nothing to say on that section. I
20 still believe that those of us who are entitled to rights are e
21 entitled to our day in court.

22 THE CHAIRMAN. May I ask those who are present, if anybody
23 has any objections to make to hand them in in writing and they
24 will be most gratefully received. If you will do that, that
25 will expedite matters for us; we feel that you gentlemen know a
26 good deal about this matter and we would like to have the bene-
27 fit of your experience and your advice.

28 MR. There will be a meeting later on in the
29 year, Doctor?

30 THE CHAIRMAN. I don't know for sure, but it is very likely.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

MR..... We can go home and think the matter over, and then have the whole matter discussed later on in the year.

THE CHAIRMAN. Probably it will; I can almost state positively it will. Anything further in regard to Section 5?

MR. WEILL. I would like to suggest that possibly you are bringing in here the same conditions that prevail in the Interstate Commerce law and that has caused a great deal of friction. I would suggest that possibly some provision in here would avoid that trouble, especially in regard to the abandoned rights; you would have to determine that.

MR. KETCH. I wish to say that I think it is all right to employ the force of the State if necessary under the conditions suggested by a preliminary process or writ: but it is a very unusual thing, even in the courts, and is required to be presented by affidavit and bond, in order for the Commission to exercise any such power of actually interfering. An execution as suggested would be of very, very doubtful legality or propriety. No specific execution could be issued; it would be a judgment quieting title, and the only way that it could be put into effective operation would be by a suit for injunction restraining an interference and show specific title and get a specific remedy; and I do not see how such a judgment could ever be carried into execution.

THE CHAIRMAN. That isn't the point involved in Section 5.

The meeting adjourned until 2 o'clock P.M.

Tuesday, May 28, 1912.

2 o'clock P. M.

1
2
3 HEARING BEFORE THE CALIFORNIA STATE WATER COMMISSION,
4 Assembly Room, Mills Building, San Francisco, California, upon
5 a proposed "Water Commission Bill".

6 Present: Commissioner George C. Pardee, Chairman, and
7 Commissioners J. R. Baumgartner and Francis Cuttle.

8 MR. PARDEE: Any further objection to Section #6?

9 MR. LOMBARD: It occurs to me as to whether or not the
10 Legislature would have the right to say whether certain water
11 rights should be considered unappropriated, - and that might rend-
12 er the whole proposition nugatory. The court might say the
13 Legislature had no right to pass such an Act. Would it not be
14 better to prepare some system of condemnation?

15 MR. PARDEE: That is the first time anybody suggested
16 anything of that kind, that the Legislature should say that
17 the law would render rights nugatory.

18 MR. LOMBARD: Would the courts not decide that rights
19 had vested under the old law?

20 MR. PARDEE: I am not a lawyer and I do not know.
21 That is the first time this has ever been suggested.

22 MR. KEECH: Mr. Chairman, if I get the pith of the
23 question, it is this: It is beyond the legislative power
24 to declare that rights shall be forfeited in certain cases.
25 I think that is plainly true if it really does forfeit rights
26 that cannot be forfeited; but it provides for a method of
27 determining whether they are in existence. As I understand,
28 it is primarily a guide to the commission to be valid as
29 soon as it may be made by legislative acts, and leave it to
30 the courts to decide whether any portion of it is uncon-
stitutional. It starts out by saying "Subject to vested

1 and existing rights", and I suggest it close with that same
2 declaration.

3 MR. PARDEE: Once is enough.

4 MR. LOMBARD: I believe the latter clause would govern.

5 MR. PARDEE: I do not think it would go that far.

6 MR. KEECH: I have prepared a section covering riparian
7 rights. It should be inserted on page 1, at the end of line
8 21, in the following words: "Unless the riparian character be
9 preserved by express provision in the instruments under which
10 they pass, or by the existence of an apparent easement for the
11 use of the waters of the stream upon them at the time they so
12 pass", - so it adds that to the definition, The instrument by
13 which they pass would be either by deed or by partition. When
14 there exist ditches, and they are obviously supplied by water
15 in that portion of the bed, under the rule of our courts the
16 riparian rights, or easements, or actual existence of the
17 ditches would preserve the riparian rights. And I think that
18 should be provided for.

19 MR. PARDEE: All right. (Reading) "Section 6: The State
20 Water Commission is hereby authorized and empowered to in-
21 vestigate, for the purposes of this Act, all stream systems,
22 portions of stream systems, or other sources of water supply,
23 and to take testimony in regard to the rights to water, or the
24 use of water, thereon or therein, and to determine whether or
25 not such water or any portion thereof, or the use of said
26 water or any portion thereof, heretofore filed upon or ap-
27 propriated by any person, firm, association or corporation,
28 is unappropriated. The findings and conclusions of the
29 Commission on questions of facts shall be prima facie correct,
30 and unless changed by judicial decree, on a suit brought in a
court of competent jurisdiction, within three years after the

1 passage of this Act, shall be conclusive."

2 MR. ADAMS: Why not make it the duty of the Commission to
3 determine what water has been appropriated. Then, it natur-
4 ally follows, what has not been appropriated. It would be
5 difficult to determine what water has not been appropriated.
6 It is simply the point of view of attacking the thing.

7 MR. PARDEE: Then you want it to read like this: "And to
8 take testimony in regard to the rights to water or the use of
9 water thereon or therein, and to determine whether or not such
10 water or any portion thereof, or the use of said water or any
11 portion thereof, heretofore filed upon or appropriated by any
12 person, firm, association, or corporation, is appropriated."
13 You want to determine the same thing with reference to rights
14 not appropriated. Strike out the syllable "un".

15 MR. LOMBARD: In order to determine what portion of such water
16 is appropriated?

17 MR. PARDEE: Yes sir. Strike out the syllable "un". Put it
18 in the positive instead of in the negative. All right. Is
19 there anything further regarding section #6? Strike out the
20 words "three years, after the passage of this Act" and say,
21 "At the pleasure of this Commission".

22 MR. KEECH: It is useless to give the findings of the
23 Commission the force that they cannot have as to being con-
24 clusive. The findings of the COMMISSION are prima facie cor-
25 rect. To be conclusive it can only be so by a judicial decree
26 and due process of law.

27 MR. PARDEE: Due process of law is within one year.

28 MR. KEECH: The law does not recognize time as due process of
29 law. I think it would be unconstitutional because of not
30 having a title. The act of procedure is, whenever you take up
a matter which is special and essentially a change in the

1 statute of limitations, it should be met by a direct change in
2 the statute and leave it out of this bill. I believe the
3 statute of limitations should be amended so that a certain
4 length of time should be conclusive.

5 MR. PARDEE: Then you are going to wind up in confusion, be-
6 cause you would start off say by A, B, and C, and A may pass,
7 and B may not pass, and C may not pass, and thereby you would
8 be in confusion. This should be so arranged that it stands
9 upon its own bottom.

10 MR. KEECH: Is it not really endangering the Bill, they hav-
11 ing authority to revoke that decision? It seems you are drag-
12 ging in a deformity of law instead of making it in harmony.

13 MR. LANE: You are proceeding to determine the water sheds in-
14 volving, possibly, a great number of rights and holders of
15 rights, large and small, and there is no provision here for
16 notice of any kind. The party simply goes ahead and makes
17 its own investigation, and these people being advised what they
18 have done, and they may have rights they have held for years
19 cut off without any knowledge, or any reasonable knowledge,
20 within one year's time, in a matter they are not expected to
21 have knowledge of at all. It seems to me that would breed
22 litigation. It seems to me they would have to jump into
23 court or be snuffed out.

24 MR. PARDEE: All that is provided for in here.

25 MR. LANE: Still they must jump into court to defend themselves.

26 MR. PARDEE: Provided they have any objection to the findings
27 of the Commission. If they have not any objection to the find-
28 ings of the Commission, they need not go into court. If they
29 have notice of the findings of the Commission, why not bring
30 them into court as soon as possible? You have to findings of

1 the Commission determined as soon as it may be possible.

2 MR. WIEL: Simply a matter of adding to the two meanings there ,

3 the decision shall be prima facie correct,- that means it stands

4 until set aside by court . I should think you would have a

5 section at the end of the Bill to the effect that the statute

6 of limitations, or any attack upon it, should be in such and

7 such a time, and it should be put in a section by itself in the

8 Bill.

9 MR. PARDEE: I see no objection to that.

10 MR. WIEL: As to how conclusive it should be that is entirely

11 unnecessary.

12 MR. PARDEE: I was drawing special attention to the limitation.

13 MR. WIEL: I think it should be put in a section of its own

14 in the Bill.

15 MR. KEECH: I would suggest further that it is inserted also

16 "Unless changed by judicial decree on a suit brought in a court

17 of competent jurisdiction for the determination of this Act".

18 As to who the parties are, does it mean to say all private par-

19 ties, - any suit? What would be the suit? Any suit this Act

20 authorized to determine the rights? If it means incidentally

21 suits between private parties, then it undertakes to make con-

22 clusive as a finding between them what could not be made

23 conclusive even in a direct action by the State as provided

24 elsewhere, because it would be between parties not parties to

25 the litigation. It seems to me to be so vague it is valueless.

26 It would only breed trouble. This Bill should be as clear as

27 possible. It is plainly unconstitutional in attempting to make

28 it conclusive. I do not think it is worth while to put it in.

29 All we would have to do would be to bring it up in court. We

30 lawyers do not approve it.

1 MR. PARDEE: So far as I am concerned I would give you the
2 opportunity. We will go on to section #7. Has anybody anything
3 more to say about section #6?

4 (Reads) "Section #7: A majority of the Commissioners shall
5 constitute a quorum for the transaction of any business, for the
6 performance of any duty, or for the exercise of any power of
7 the Commission. No vacancy in the Commission shall impair the
8 right of the remaining Commissioners to exercise all the powers
9 of the Commission. The act of a majority of the Commissioners
10 when in session as a Board shall be deemed to be the act of the
11 Commission; but any investigation, inquiry or hearing which
12 the Commission has power to undertake or to hold may be under-
13 taken or held by or before any commissioner designated for the
14 purpose by the Commission. The findings of such commissioner
15 shall be furnished to all parties to the hearing prior to the
16 approval or confirmation of such finding, order or decision by
17 the Commission. Either party to such hearing shall have the
18 right to appeal to the whole commission prior to their approval
19 of the findings of such commissioner. And every finding, order
20 or decision made by a Commissioner so designated, pursuant to
21 such investigation, inquiry or hearing, when approved by the
22 Commission and ordered filed in its office, shall be and be
23 deemed to be the finding, order or decision of the Commission."

24 We strike out lines 15, 16, 17, 18 and 19, beginning with the
25 word "the" on line 14 to and including the word "commissioner"
26 on line 19, as follows: "The findings of such commissioner
27 shall be furnished to all parties to the hearing prior to the
28 approval or confirmation of such finding, order or decision by
29 the Commission. Either party to such hearing shall have the
30 right to appeal to the whole Commission prior to their approval
of the findings of such commissioner."

1 MR. LOMBARD: Why do you strike that out?
2 MR. PARDEE: Of what use would that be to anybody? The Com-
3 missioner himself has determined the matter and made a decision.
4 After the decision it goes out to anybody. It is like asking
5 for a decision before the Commission makes it.
6 MR. KEECH: I have supposed that was inserted in order to con-
7 form to the analogy of the courts where a referee is appointed
8 who investigates, takes proof and makes findings and reports
9 to the court, and before the court makes it the findings of the
10 court, the parties have notice of it and have the right to
11 appear and state their reasons for or against it. The whole
12 Commission is a body, but this is where one commissioner goes
13 out and brings in findings and reports for or against it.
14 MR. PARDEE: With the record?
15 MR. KEECH: With the record. But where the commissioner brings
16 in the facts and reports, the commission has it before them
17 and they find according to their views. The single commission-
18 er brings in his view in his report. The commission would
19 have the advantage of the same facts the single commissioner
20 would have. Otherwise they would not have them. I think that
21 would be analagous to the determination of the courts.
22 MR. PARDEE: I have made a note of that here: (Reads) "The
23 commission, in its discretion, may allow under the provisions
24 of this Act, the appropriation of unappropriated water or the
25 use thereof, and of water or the use thereof which is not now
26 appropriated or being used for a beneficial purpose, or which
27 has ceased to be applied to beneficial use, or which may here-
28 after be declared, in accordance with the provisions of this
29 Act, to have ceased to be applied to beneficial use."
30 In other words, the Commission can take such water, and

1 use such water as they find unappropriated, and so on.

2 MR. LOMBARD: I want to make a suggestion as to section 7: It
3 might be a good scheme to provide for a Deputy Commissioner.

4 MR. KEECH: If they exercise judicial functions you cannot
5 delegate them.

6 MR. PARDEE: I doubt if you can do that.

7 MR. LOMBARD: This is a hearing before a single Commissioner
8 and is not final, and you may as well provide for a Deputy Com-
9 missioner. I am trying to take care of some of this vast
10 amount of work these three commissioners will have to do.

11 MR. PARDEE: That is provided for in the balance of the Bill.

12 As to this section on underground water, I am in doubt
13 somewhat myself. (Reads) "Section 6: Underground water,
14 for the purpose of this Act, is defined as any water that oc-
15 curs or is found beneath the surface of the ground".

16 Underground water is underground water.

17 MR. KEECH: You may as well define all water making streams.
18 The sub-surface stream is deemed to be part of the stream; one
19 minute it is in the open and another minute it is below the sur-
20 face. The vested rights in a stream under the riparian law
21 is the stream consisting of the running open water on the sur-
22 face and also of the sub-surface water in the same bed. And
23 here you attempt to put them in the same category.

24 MR. BAUMGARTNER: As we have handled "Stream flow" in the Bill,
25 does it interfere with the sub-surface stream?

26 MR. KEECH: You have handled "stream" so far under the term of
27 riparian rights only, and the riparian rights include that
28 sub-surface flow and is sustained by the courts, and sustained
29 by constitutional provision. Now you propose to take out and
30 destroy it as a stream flow and put in and classify underground

1 water with sub-surface flow.

2 MR. PARDEE: How would this do: "Outside limits of defined
3 stream".

4 MR. KEECH: Just simply as to stream flow. MR. CUTTLE: If there
5 is any interference with underground stream flow belonging to
6 riparian proprietors, they have a right to be heard, and if
7 they can show that they are interfered with, they will be pro-
8 tected in that right, because it will be presumed the Commis-
9 sion has the right to protect them.

10 MR. KEECH: After destroying rights, you assume they would be
11 protected on a very high plane of justice. I think it would be
12 better to be right in this Bill.

13 MR. CUTTLE: All I seek is to determine what is underground
14 stream and what is percolating water.

15 MR. KEECH: I admit it would be simpler to say it all belongs
16 to the public and let the Commission distribute as they think
17 just, but it would not be the wise thing to do. This sub-sur-
18 face flow is an all important matter and it is so radical a de-
19 parture from the law that I do not think it would stand. I
20 think you have attempted to incorporate riparian law in accord-
21 ance with the decisions of the courts, but now you take that
22 underground flow right out of the rule and class it with water
23 with which it has never been classed; and since you provide for
24 both kinds of water, why have you made that radical change?

25 MR. PARDEE: Put right at the end of the sentence "Exterior to
26 banks of streams".

27 MR. KEECH: I should say "Sub-stream flow". You have not de-
28 fined stream flow, but nevertheless it is defined under the law.
29 You have not defined stream, but that is a term known to the law.
30 Either would be satisfactory to me.

1 MR. PARDEE: You want it confined to the banks of a stream?

2 MR. KEECH: Yes, that is all right. They mean the same thing.

3 MR. SHORT: The definition of what constitutes stream flow
4 within the meaning of the right of appropriation to appurtenant
5 land would not change the right if it was conditioned from the
6 present determination, but they have determined a great many
7 subterranean flows where they have been connected up, in Los
8 Angeles and other places, are part of the stream flow and con-
9 nected as such. If you define that as stream flow it would not
10 change the right of vested property in percolating waters.
11 So that the definition that would confine it within the banks
12 would exclude large quantities of water now subject to the law
13 of streams. If it had any effect at all it would simply have
14 a narrowing effect with respect to flowing and percolating
15 waters as distinguished from flow, and if your definition were
16 accepted you would simply narrow the definition of flow instead
17 of widening it. Therefore, you do not want to make it narrower
18 than it is. You cannot legislate as to stream flow, and there
19 is no law that I know of to appropriate the underground percolat-
20 ing waters of another stream flow. You would not want to narrow
21 the definition of stream.

22 MR. KEECH: What would you say?

23 MR. SHORT: I would say stream flow and nothing more.

24 MR. WIEL: You would say "Underground" and not say part of the
25 stream at all. In Section 8 it says underground part of the
26 stream.

27 MR. CUTTLE: It includes it in the definition of underground
28 water.

29 MR. WIEL: You do not deny that underground water is under
30 ground.

Mr. CUTTLE: No.

1 MR. WIEL: This section does not deal with it at all.

2 MR. LOMBARD: The trouble is later on it provides means for
3 applying that water.

4 MR. BAUMGARTNER: "Underground water for the purpose of this
5 Act".

6 MR. SHORT: Is it not the purpose of the definition to dis-
7 tinguish between "stream flow" and "underground water". The
8 underground water embraces stream flow for the purposes of the
9 law. The object of the Act is to keep all of the water of the
10 stream and the percolating water.

11 MR. TAIT: I would say just "Other than stream flow".

12 MR. CUTTLE: Would not this difficulty crop up of determining
13 what is underground stream flow or percolating water?

14 MR. SHORT: You cannot get rid of that difficultly. The rights
15 of one kind of water is of one nature, and of the other kind of
16 water of another nature. You want to leave the stream unimpair-
17 ed and call all other kind of water underground water.

18 MR. WIEL: If a man wants to make an appropriation of water
19 by building a tunnel on the banks of a stream, he should not
20 look to this section, but to the other, to the previous section.
21 You do not want to include the underground stream in this part
22 of the Bill.

23 MR. KEECH: That is correct. It is included in the other.

24 MR. WIEL: Yet every man, nine out of ten, consider when they
25 build a tunnel to get water, that they are appropriating under-
26 ground water.

27 MR. KEECH: What they consider I do not know wnything about.

28 MR. SHORT: The courts say that any water that continues with
29 the stream, and probably to reappear again, that would be stream
30 flow.

1 MR. PARDEE: Confined or not confined?

2 MR. SHORT: Yes sir. They enjoined pumping way out here in
3 the San Fernando Valley because they penetrated the gravel
4 through which the river was flowing. They took away the per-
5 colating water.

6 MR. WIEL: I would suggest in section 8 "Except stream flow".
7 You also put in the previous part of the Bill "Except under-
8 ground flow". You are now going to except anything that is in
9 the stream from the underground provisions. You want to make
10 it clear, whether it goes in under the previous portions of the
11 Bill?

12 MR. KEECH: I understand the previous portions of the Bill
13 concern riparian rights which are directly connected with
14 streams.

15 MR. PARDEE: Not riparian rights but appropriators.

16 MR. WIEL: I suggest this Bill have two or three chapters,
17 underground water and stream flow,- and provide that no water
18 that directly effects a surface flow shall be affected by this
19 chapter. In another chapter, provide something corresponding
20 so we can keep them separate. Have one chapter apply to stream
21 flow and another chapter apply to underground water.

22 MR. KEECH: I suggest that as Mr. Wiel is the greatest authority
23 on water and water rights, he be appointed a committee to
24 draft the amendment.

25 MR. SHORT: I suggest the object should be not to try to de-
26 fine stream flow but merely to describe it, because the de-
27 cisions of the courts of this State have been as wide as the
28 human mind can go in describing stream flow, and is wider than
29 any definition you can give.

30 MR. WIEL: I would not make any distinction between stream
flow and underground water, make no distinction whatever, but

1 take water supply. If water supply is partially underground
2 and partially on the surface, there is no reason why people
3 should not enjoy it whether underground or in the stream. There
4 should be a right in the supply regardless of whether under-
5 ground or surface.

6 MR. KEECH: It is a departure from this Bill and is a radical
7 construction.

8 MR. SHORT: My suggestion would be that the Act, the general
9 scope, should apply to all waters now unappropriated as stream
10 flow, and to all underground waters other than stream flow.
11 When you say that you have done the best you can.

12 MR. PARDEE: Then we may go to section 9. (Reads)

13 "Section 9: An overlying land owner, for the purpose of this
14 Act, is defined as the owner of a tract of land under any port-
15 ion of which such water is situated".

16 I would suggest instead of "Such" you put "Underground water".

17 MR. WIEL: Suppose you have a tract of land on the uplands
18 above the river bottom and about ten feet below you goes a
19 stream of water and your line is just where the upland and bottom
20 land divide, ought you or not have the rights you give here to
21 the man who gets underground water.

22 MR. CUTTLE: If he can find underground water on his land or
23 any portion of it.

24 MR. WIEL: He is on the boundary and he can put in a tunnel
25 and get the water. It will come right to him.

26 MR. CUTTLE: I do not think he would have the right to use that
27 water.

28 MR. WIEL: Why has he not a right to that water if he is next
29 to it?

30 MR. CUTTLE: Because he is not within the boundary.

1 MR. WIEL: He must not have the right to water except that
2 directly under his land?
3 MR. CUTTLE: There is a way in which he could appropriate it
4 under his own land or under the adjoining land.
5 MR. WIEL: You say he should not have the water except right
6 under his land?
7 MR. CUTTLE: No. If he gets water under his own land he would
8 be entitled to it.
9 MR. WIEL: Why not when side by side?
10 MR. CUTTLE: Because he gets it from the other land. As
11 long as he stays on his own land he has that right. I under-
12 stand in boring oil wells if a man sinks a well he has a right
13 to the oil, no matter where it comes from. I should say the
14 same with water.
15 MR. WIEL: I should say "Adjacent to such underground water".
16 MR. LOMBARD: Such a case would not be possible, Mr. Wiel.
17 MR. BAUMGARTNER: If you sink a well here,- there is the bound-
18 ary of your land,- if you sink it in the center of this land and
19 get water it is assumed to come from your land. If that in-
20 fringes upon another's rights, that is provided for in another
21 part of this Bill.
22 MR. CUTTLE: So long as he stays on his own land.
23 MR. MARX: If the water comes in there and the land overlies
24 that water, that land would be, of course, entitled to have it.
25 MR. CUTTLE: Is it not well defined that if a man stays on his
26 own land and bores for oil the oil belongs to him?
27 MR. SHORT: Yes sir. The only distinction I call your at-
28 tention to is at the common law, and as we thought for many
29 years in this State, the law with relation to underground water
30 was the same as related to oil so long as he remains on his own

1 land, it belonged to him. In the case of Katz vs. Walkinshaw,
2 the Court held "If the use of water was so excessive that it
3 tended to injure adjacent lands it was an equitable injury to
4 the adjacent lands and could be enjoined to that extent."
5 So, I understand the waters belong to the soil subject to the
6 limitation that if it can be shown that the taking of the water
7 is so excessive that it injures his neighbor's land he can be
8 enjoined from doing it.

9 MR. CUTTLE: Except when he uses the water on his own land?

10 MR. SHORT: Except when he uses it on his own land.

11 MR. CUTTLE: That is provided for in this Bill here.

12 MR. PARDEE: We will proceed to section 10. (Reads)

13 "Section 10: Overlying land, for the purpose of this Act, is
14 defined as a tract of land in one ownership, overlying in whole
15 or in part such underground water."

16 MR. WIEL: What do you mean by "One ownership"?

17 MR. PARDEE: By one owner. There cannot be two tracts of
18 land and two ownerships.

19 MR. WIEL: Suppose I own a piece of land and I buy ten acres
20 more. Is not that one ownership?

21 MR. PARDEE: If you have fifty acres underlying and fifty
22 acres overlying, and sold the fifty acres overlying, you would
23 not have the right to take water from your fifty acres under-
24 lying and deliver to the fifty acres overlying which you had
25 sold.

26 MR. WIEL: I think that definition is correct. In the ripar-
27 ian law, when a man bought adjacent land he did not become a
28 riparian owner as to that land.

29 MR. LANE: If a man owns four hundred acres of land and sub-
30 divides it, puts down a well, and subdivides the land into forty-

1 acre tracts---

2 MR. PARDEE: That is provided for later.

3 MR. WIEL: I think it should be left as it is. Leave it

4 "One ownership".

5 MR. SHORT: Since an overlying land owner has the undisputed

6 right to own the water underlying his land, I do not think we

7 have any right to interfere with that.

8 MR. KEECH: This definition starts out by saying that if,

9 under one corner is found underlying water, then the character

10 of overlying land attaches to the entire tract.

11 MR. CUTTLE: How are you going to determine how much of that

12 land is overlying? If he finds water under a portion of it I

13 think you should assume he has a right to the underlying water

14 under the whole tract of land.

15 MR. WIEL: I think so too.

16 MR. KEECH: I think it changes the common law rules and the

17 decisions, but I think it is right.

18 MR. SHORT: It practically makes the land owner a riparian

19 owner without any segregation. He could tack on to this ripar-

20 ian land as regards underground water but he cannot as to flow-

21 ing water.

22 MR. CUTTLE: I am not agreeable to that. If he has a tract of

23 land and says "I can irrigate this whole country", and there-

24 fore buys it, I am not agreeable to that. If he acquires

25 another tract of land he should demonstrate that is overlying

26 land before he can irrigate that.

27 MR. WIEL: You have to provide here that if he sells off that

28 tract of land he has no right to the use of that well.

29 MR. CUTTLE: After he develops water and in good faith uses it

30 there, he may segregate the land and not keep it in the same

1 tract.

2 MR. WIEL: If Mr. Cuttle is going to allow the water to remain
3 with the tract, although subdivided, if you cut off the rights
4 and do not allow the land being bought to have the water from
5 the tract unsold, you are cutting off a large portion of the
6 land in this State.

7 MR. CUTTLE: After he develops water you do not cut him off
8 from the use of it by segregating the land.

9 MR. WIEL: If he sells off part of the tract with the right
10 to be supplied from the water without so providing that it shall
11 have water, and thereby it has no rights to water, and after-
12 wards he buys that part of the tract back again, then he cannot
13 get the water right to the land that he has sold and bought back.

14 MR. CUTTLE: He must appropriate it and comply with the rule.

15 MR. WIEL: He would get only a subordinate right to water to
16 the subdivided land.

17 MR. PARDEE: The object was so that State would have the right
18 to keep a record of the water used, the overlying rights and
19 so forth, more for the information of the Board, and the State
20 represented by the Board, than for any other purpose.

21 MR. WIEL: I suggest "Adjacent" instead of "Overlying".

22 MR. PARDEE: (Reads) "Section 11: Owners of overlying lands
23 shall have the right to use such underground water on such over-
24 lying land only, and such use shall be for useful and beneficial
25 purposes only."

26 Strike out from that Section from the words " and may be had" to
27 the end of the section, inclusive, and add "Provided such use
28 is for domestic purposes only", and then go on and define dom-
29 estic purposes.

30 MR. SHORT: Don't you think that would be a very restrictive use

1 of water? If a man had water to dispose of, should he be pro-
2 hibited from so doing?
3 MR. PARDEE: That is provided for afterwards. He has the
4 right to use the water on his own land, but cannot use it on
5 another's land.
6 MR. CUTTLE: Then there will have to be another section to give
7 him the right to use water for all beneficial purposes on his
8 own land. There is no such provision here.
9 MR. SHORT: Of course, he has got it if it is on his own land.
10 MR. WIEL: If you give somebody the right to appropriate
11 water you assume the right to take it away from them.
12 MR. SHORT: There are a great number of tracts of land in this
13 State where percolating waters are extracted, of course.
14 MR. LANE: If he uses it on his own land he need not appropri-
15 ate it, but if on his own land he attempts to develop water and
16 then takes it off, before he does take it off he must first
17 appropriate the water. He must make an appropriation before
18 he takes it off from his own land.
19 MR. CUTTLE: No one could go on to the land of another without
20 his permission even though this Commission gives him the permis-
21 sion to do so. This would not permit him to go on another's
22 property and appropriate water.
23 MR. SHORT: Under this law if he appropriates water to put on
24 another's land, where do you get anywhere only to limit it?
25 MR. CUTTLE: By carrying that water away from overlying land
26 he may do it to the injury of somebody else.
27 MR. SHORT: IT seems to me that these definitions and these
28 restrictions with reference to appropriation render it far more
29 difficult in the distribution of water than the rules that now
30 exist in law. And since no man can enter upon another man's lot

1 and take his water the whole scope of this Act would be many
2 degrees more expensive and uncertain than the rights to the
3 use of waters now in use in this State.

4 MR. CUTTLE: Let me give you a case in point: Here is a case
5 near Santa Ana River. A man acquired three or four acres and
6 put down a well and attempted to carry water off four or five
7 miles to irrigate land. Litigation sprung up about that. There
8 are wells on adjacent land used for the irrigation of land
9 where the water is found, and these other people are more recent
10 comers. They lowered the water so the people who were there
11 first can hardly get water for their own land, and they are the
12 first settlers. Under this Act they could not do that, take
13 water from their own land and carry it on to the other land.

14 MR. SHORT: If the effect is to take water from this small
15 tract of land, then under the decisions of the Supreme Court
16 it can be enjoined. As against some incidental matters of that
17 kind we have some large developing projects in San Joaquin Valley
18 and other parts of this State whereby owners of land, where
19 quantities of underground waters are such that it will not prob-
20 ably seriously affect anybody, but they want to go upon that
21 land and extract all the waters they can, and take it to distant
22 lands to irrigate that land, and any limitation upon that will
23 condemn the saving of hundreds of thousands of acres.

24 MR. CUTTLE: There is no disposition upon the part of the
25 Commission to prevent such development.

26 MR. SHORT: Here it says they cannot take water from land and
27 put it upon other land. Now, they have the unrestricted right
28 to take water from any land and put it upon any other land, take
29 it from land they do not own.

30 MR. CUTTLE: You say "Take it from land they do not own?"

1 MR. SHORT: Certainly, where they take water from any land
2 where it does not interfere with the rights of any other holder
3 of land. You destroy the solid, settled right to do a thing
4 and give him an appropriator's right only. What we want is the
5 right to take every drop of water we can get from under the
6 ground and put it on top of the ground to develop crops. When
7 you say that right no longer exists I think you destroy one of
8 the most valuable rights given by the law in the State.

9 MR. CUTTLE: We do not wish to destroy any rights, but when the
10 right is claimed there should be somebody to determine whether
11 it is to the injury of his neighbor.

12 MR. SHORT: The neighbor is bale to protect himself.

13 MR. CUTTLE: We want to avoid litigation.

14 MR. SHORT: I think the neighbor can take care of himself.

15 MR. PARDEE: Can He do it himself, or will he have to have some
16 lawyer to help him?

17 MR. SHORT: If it depends upon an Act of the Legislature I
18 think he would have to have two lawyers to help him. So long
19 as he does not destroy the value of his neighbor's land, a person
20 should have the right to take the water to any place he pleases.

21 MR. CUTTLE: The court will determine whether he damages his
22 neighbor's land.

23 MR. SHORT: And where there would be one instance of that there
24 would be many places where they could not develop because
25 capital would not invest under such a provision.

26 MR. LANE: The same desire on the part of those who have under-
27 ground water as to those who have stream flow. The whole decis-
28 ions seem to be that the freer the individual effort the greater
29 the benefit to some and the detriment to others. No matter how
30 beneficial it may be, a claimant must come in and get permission.

1 Why it is any more detrimental for him to come in and get per-
2 mission to use underground water than it is for him to come in
3 and get permission to get stream flow I cannot see.

4 MR. SHORT: A man has as much right to extract water as coal
5 oil or any other part of the substance of this land, and the
6 only limitation in the doing of that is he must not take it in
7 such a way as to injure his neighbor. That is the settled
8 right in property. Over the water percolating the ground he
9 has the power the same as over other property; it is no more
10 a jurisdiction over the underlying, percolating water than it is
11 over any other substance in the ground. When you say the owner
12 can take it out from under the ground, but somebody else can
13 appropriate it, you are saying that undeniable rights of parties
14 can be questioned by the Legislature as though it were the
15 right to go and get quicksilver or oil or any other substance
16 from the ground, because that is the same right. If we under-
17 take to limit or take away a right, no private capital will in-
18 vest in such an enterprise and development is destroyed. When
19 you say "I may appropriate my neighbor's water", you may as well
20 say "I may appropriate my neighbor's oil, my neighbor's quick-
21 silver, or anything else there is in his ground."

22 MR. WIEL: We might consider it from another point of view:
23 We say a man may come and take away that water if he appropri-
24 ates it, but he has not the right to sink a well and carry it
25 away upon the ground of another. People are more and more sink-
26 ing wells on their own land. I do not see why rights should be
27 given to somebody else to appropriate water upon another's land
28 to be carried away, and the party who owns the land cannot
29 develop water and carry it away himself.

30 MR. LANE: If the owner of Lot A sinks a well on his own lot

1 there is no question about it, under this law, any owner of
2 lot A could take it from lot A and take it to lot C. You would
3 have to have the permit, but there is no question even if we
4 would grant the permit to take it from lot A to lot C, he could
5 not do it if it injured the owner of lot B. Then it would be
6 unconstitutional. The only question is, would it be unconstit-
7 utional as restricting the use of property, if it required the
8 owner of lot A to get a permit before he could transport it to
9 lot C. That goes to the constitutionality and not to the ques-
10 tion of policy.

11 MR. SHORT: If you put into the law the destruction of an un-
12 doubted right it would destroy vested rights. The right to
13 take water from streams of this State is the clear privilege of
14 the state. The State could prohibit it, if the state considered
15 it proper.

16 MR CUTTLE: It seems to me that instead of throwing a cloud
17 upon it, it makes it stronger. If you get permission of the
18 Commission to take the water away it makes it stronger than if
19 you took it away without asking anybody about it.

20 MR SHORT: You do not suppose if, under the laws of this state,
21 it endangers his property, the Commission can give anyone per-
22 mission to do that?

23 MR. CUTTLE: No; but if the Commission determines it is not
24 injurious to the other's land, it is provided to so determine,
25 it is doubtful if they will go into court to dispute it.

26 MR. BAUMGARTNER: It also provides there may be an equitable
27 adjudication of the amount of the injury.

28 MR. SHORT: This Act goes on and adds to and restricts the use
29 of these underlying waters: "Where such development and carry-
30 ing away of water can be shown to be diminishing the supply of

1 water of such complaining overlying land owner, who is using
2 underground water for useful and beneficial purposes on overlying
3 land only". In other words, if your use diminished the supply
4 the larger use would have to yield to the smaller use.

5 This Bill is expressly restrictive of the right to use it and
6 distribute the underlying waters of this state. If this Bill
7 would pass in this form we have some large projects that would
8 bedead. That is all there is to it. The law goes on to say,
9 under the rights we have now, under this Bill, somebody would
10 come along and enjoin us and we would have to quit. This law
11 provides for restrictions that do not now exist.

12 MR. LOMBARD: And protection for the smaller man.

13 MR. SHORT: If he could show any injury we would have to meet
14 the law as it is and conditions as they are.

15 MR. PARDEE: This goes on and recites, in other places, without
16 any restriction. We have suggested to put in the word
17 "injurious" in various places. For instance, in Section 13, line
18 29, " And use of water shall not in any way diminish the supply
19 of water theretofore developed"; I suggest we strike out the
20 words "In any way" and insert in place thereof the word "injur-
21 iously".

22 MR. SHORT: If this law tends to establish and perpetuate an
23 appropriation of underground waters of this state and protect
24 persons from actual and improper injury, no person would have
25 reason to advocate it stronger than I would.

26 MR. BAUMGARTNER: All of these sections are so closely related
27 that if you will read them through I think they are so clear
28 no one would object to them.

29 MR. KEECH: It omits entirely the natural use of this sub-sur-
30 face water. I do not see any reason for restricting that. Other
that that, I do not see any objection to it.

1 MR. CUTTLE: That should be provided for.

2 MR. PARDEE: Section 12; (Reads) "Where an overlying land
3 owner has developed and used for useful and beneficial purpose
4 underground water on overlying land, for a period of five years
5 consecutively, last past, such overlying land may be segregated
6 into more than one tract, and all of such overlying land shall
7 be entitled to continue the same use of such underground water,
8 for useful and beneficial purposes only, as though said tract
9 of land should continue to be held in one ownership." "Last
10 past" is not necessary.

11 MR. BAUMGARTNER: Read right on.

12 MR. PARDEE: I am letting that sink into Judge Short.

13 MR. LOMBARD: The purpose of putting in "Five years last past"
14 would be to cover five years previous to the passage of this Act.

15 MR. PARDEE: No, I think it means five years at any time.

16 (Reads) "Section 13: The right to appropriate underground
17 water for use on other than overlying land may be acquired by
18 filing application for appropriation of such underground water
19 with the said Water Commission of the State of California, and
20 complying with all conditions required from appropriation of
21 water from streams of water in the State of California; provided
22 such development and use of water shall not in any way diminish
23 the supply of water theretofore developed and used, or useful,
24 by other overlying land owners on their own land, or the supply
25 of water theretofore appropriated by other overlying land owners
26 under the provisions of this Act and used on other than overly-
27 ing land. And provided further, that such appropriation, use
28 and development shall be for useful and beneficial purposes
29 only".

30 MR. WIEL: I would like to substitute in line 30, after the
word "used", the words "or useful".

1 MR. LOMBARD: Or "capable of being used".
2 MR. CUTTLE: "Capable of being used" is better.
3 MR. WIEL: Say, down in Santa Clara Valley a man has an orchard
4 and sinks a well and another man sinks a well, and the first
5 man objects because the other man is interfering with his supply.
6 It seems to me a man should be permitted to sink wells on his own
7 land for his own use as much as he pleases. If a man who joins
8 him comes along and says he is taking his supply of water, that
9 can be determined, of course.
10 MR. KEECH: That would be preserved by fixing up this previous
11 Section.
12 MR. SHORT: Is there any Act for the appropriation of under-
13 ground waters in any other state?
14 MR. WIEL: The State of Nevada has an Act which provides for
15 the use of percolating waters.
16 MR. SHORT: Where a man uses water on his own land for other
17 uses, do you claim he should obtain permission from the Commis-
18 sion to do so?
19 MR. CUTTLE: You only make it for the overlying land owner.
20 Where he desired to use water on other than his own land, he
21 would have to get permission of the Commission. They would
22 not have discretion to deny the permission. That is this sec-
23 tion 13.
24 MR. SHORT: You say he cannot do it. That right is gone.
25 The subsequent right to appropriate, which is less stable and
26 a less satisfactory right than the one you have taken away from
27 him, you provide. For the Legislature to say a man cannot use
28 his property at all, and then say he may make an appropriation
29 of it, subject to certain restrictions, and then use it, would
30 be, to my mind, very greatly to discourage development. To say

1 a man cannot develop and enjoy his own property, but may approp-
2 riate his own property, would be to throw away the right he now
3 enjoys by law and give him in lieu a right by permission which
4 may be taken away from him.

5 MR. PARDEE: Who owns the water underground?

6 MR. SHORT: The land owner.

7 MR. PARDEE: The ownership of the corpus of the water?

8 MR. SHORT: Sure, yes sir. When you say that something which
9 is now permitted by law cannot be done, and do say that something
10 different can be done in a different way, it seems to me the
11 Legislature would have no authority to do that.

12 MR. LOMBARD: Suppose you get a project developed and some still
13 larger corporation, a corporation of large financial interests,
14 takes the water from your well, and takes it up to Siskiyou
15 County, to make it absurd, you should have the right to stop
16 them.

17 MR. SHORT: If you come immediately adjacent and did anything
18 as violent as that, the present law would protect us. If there
19 is anything I am familiar with it is this water development
20 matter. We have projects now on hand that involve a good many
21 millions of dollars, and our whole anxiety is that we should be
22 protected in the rights now given us and when you say you cannot
23 take water except it is appropriated, you are saying something
24 that will take twenty years for this state to get over.

25 MR. CUTTLE: Where does it say that?

26 MR. LOMBARD: The beginning of Section 13.

27 MR. CUTTLE: I understand you claim you would have no objection
28 to the provisions of Section 13 if it were worded so that you
29 would have the right to take that water and use it on other than
30 overlying land, giving the Commission the power to refuse such

1 request or deny such application.

2 MR. SHORT: The idea I had was this: That the larger the use
3 of the water supply the better. If you want to take jurisdiction
4 over the act of conveying that water on other lands, to irrigate
5 the other lands with it,- that is what I am talking about,- I
6 do not deny the right to overlook the business of conveying
7 the water, and I do not think that would impair the unlimited
8 use of the water.

9 MR. CUTTLE: Unless the Commission had the right to deny the
10 right of a land owner to take water from overlying land, I think
11 the Act would be worthless.

12 MR. SHORT: If the owner can not do it the Commission can't.

13 MR. CUTTLE: I understand under the Commission plan in Oregon
14 about nine hundred such disputes were settled without going into
15 court at all. We are here trying to find out how water can be
16 used without resorting to litigation.

17 MR. SHORT: If the law gives the right, as the law now is, we
18 would not object to restriction possibly, but to say it is un-
19 lawful without appropriation to take water from overlying land
20 to some other land, it would prohibit the use of underground wat-
21 er. I may be subject to the criticism that I have aided in
22 the restriction of the use of water, but on the other hand, I
23 have aided in the appropriation and use of more water than any
24 other man in this state, so I plead guilty. Our whole business
25 now is in financing and using and in the stability of the use
26 of water. If we do not do it now it never can be done. And
27 we know whether it will satisfy the financial men and whether
28 it can be done or not.

29 MR. WIEL: Why will the opportunity be gone?

30 MR. SHORT: Because the water will be used upon land that has
other supply.

1 MR. WIEL: You have in mind, then, if your project were around
2 the town of Lindsay, and if you would sink your well and carry
3 the water on the other side of the San Joaquin Valley, under this
4 law you would not be permitted to sink any more wells.

5 MR. SHORT: Not at all. We have reserved the right to take
6 water from some lands to other lands that have no water over
7 them or under them. Now, under the law, if we have to appropri-
8 ate our own water the investors would not put in any money
9 at all.

10 MR. WIEL: Why should not these Lindsay people be permitted
11 to use the water on their own land as well as others take it on
12 their lands?

13 MR. SHORT: Because they can get a supply elsewhere, and if
14 we cannot take the water now we never can get water on our lands
15 at all.

16 MR. CUTTLE: With the proviso giving you the right to take water
17 away from overlying or underlying land, where the right had been
18 preserved, would that cover your case?

19 MR. SHORT: We have this scheme: There are great tracts of
20 alkali lands where we expect to pump the water out, and that
21 will eliminate the alkali, and we expect to pump that water
22 forty miles to other lands, and this law would say we could not
23 do that without an appropriation and would put us under a res-
24 triction.

25 MR. NEAR: It is the overloading of that land that makes it
26 alkali.

27 MR. LOMBARD: I am fearful we are heading into a maze of court
28 decisions where I would like to deflect that into an arbitration
29 Board.

30 MR. SHORT: What we object to is that we cannot use water where

1 we now have the right to its use , and this law would do away
2 with a right that now exists.

3 MR. CUTTLE: Write a section for that.

4 MR. SHORT: All right, I will do that.

5 ME. PARDEE: (Reads) "Section 14: When underground water has
6 been used for useful and beneficial purposes on other than over-
7 lying lands for a period of at least one year prior to the
8 passage of this Act, such use of water may be continued on other
9 than overlying land for domestic use or other beneficial pur-
10 poses, in such quantities as the same shall have been used for
11 useful and beneficial purposes for a period of at least one year
12 prior to the passage of this Act. But failure so to use such
13 water on other than overlying lands for a period of two conse-
14 cutive years shall be and be deemed to be an abandonment and
15 forfeiture of the right to use such water on other than over-
16 lying land".

17 MR. LOMBARD: I suggest that a two-year period is too short a
18 time. That is only a two-crop period. If a man takes a trip
19 abroad and don't rent his land, he has lost his right.

20 MR. CUTTLE: If he don't make anything off his land how is he
21 going to get money to go abroad?

22 MR. PARDEE: How long do you suggest, Mr. Lombard?

23 MR. LOMBARD: I suggest five years.

24 MR. PARDEE: We will consider it.

25 MR. KEECH: Why is it not sufficient to say: "Such use of
26 water may be continued"?

27 MR. CUTTLE: I think it is sufficient.

28 MR. KEECH: The intention is to perpetuate the same use. It
29 says: "Such use". I think the word "such" refers to all pre-
30 vious conditions.

MR. PARDEE: We will take the matter under advisement.

1 (Reads) "Section 15; Overlying land owners shall have the
2 right to file complaints with the Water Commission against any
3 person developing or having developed water and carrying or
4 having carried such developed water away from overlying lands,
5 as follows:

6 (a) Where such development and carrying away of water
7 can be shown to be injuriously diminishing the supply of water
8 of such complaining overlying land owner who is using under-
9 groundwater for useful and beneficial purposes on overlying
10 land only.

11 (b) Where such development and carrying away of water is
12 shown to be injuriously diminishing the supply of water of one
13 who has secured the right under this Act to develop water on
14 overlying land and to use the same on other than overlying land.

15 Such complaint shall be in writing on forms provided by
16 the Water Commission of the State of California, and shall be
17 sworn to and filed with said Water Commission within one year
18 after the first diminishing of water, which it is sought to pre-
19 vent, occurs."

20 MR. WIEL: I suggest that line 24 page 9 should read "Overlying
21 land owner whose supply is used or useful for beneficial pur-
22 poses on overlying land only." "Used or capable of being used
23 for beneficial purposes on overlying land only". Lines 23 and
24 24: "Supply of water used or useful on overlying land only".
25 "Where such development and carrying away of water can be shown
26 to be injuriously diminishing the supply of water",-- and in-
27 sert, "Used or capable of being used for beneficial purposes on
28 overlying lands only". I want to give the preference to over-
29 lying lands at all times against everybody else.

30 MR. SHORT: It would have this effect if a man could show it
might be made useful; he might object to any use by anybody
else. I think it would do more harm than good. I think every

1 property owner has the right to protect his property from act-
2 ual injury, and this is simply notice that in the development
3 of the water supply special and additional protection is given
4 to the land owner against the developer. It is simply going
5 directly down the road in the other direction from riparian
6 rights.

7 MR. WIEL: I think if underground waters can be used on the east
8 side of the San Joaquin Valley I would rather see it used there
9 than taken on the west side of the San Joaquin Valley.

10 I would rather see underground water used on overlying land than
11 taken to other lands.

12 MR. SHORT: If the owner of overlying lands wishes to sell the
13 water for a larger use, he should be permitted to do it.

14 MR. KEECH: It seems to me to involve what has been suggested on
15 the other side as a "dog in the manger" policy. I really be-
16 lieve the man who has used the underground water, or has the use
17 of underground water by natural means, has the right to object,
18 has a right to have it remain there for his own use. This clause
19 "where it is capable of being used" seems to me to be a dog -in-
20 the- manger policy. This Bill seems to me to be adapted for the
21 purpose of taking up all waters and seeks to determine what are
22 private, and everything that is not beneficial and artificial
23 use, subject to appropriation, and subject to proportion.

24 MR. WIEL: You will find many districts in this state will stop
25 development because the water has been all gobbled up.

26 MR. KEECH: The point is this: Whether the rights the people
27 now have shall be respected, or whether there shall be a Commis-
28 sion to take upon its shoulders the protection of all or the
29 smaller only. This Bill plainly proposes to do that, it seems
30 to me. While it may be unconstitutional wherever it invades

1 existing rights, it, nevertheless, assumes to protect all by an
2 equitable proceeding and all sources of supply to beneficial use.
3 I think that amendment put in there is not consistent with the
4 Bill. I believe it will be necessary to leave that thing out
5 and not put it in there because it will allow a dog-in-the-
6 manger policy.

7 MR. WIEL: When the water supply is gone what are you going to
8 do? Then comes your equitable distribution. You have the water
9 partitioned to a few licensees. I think in this you have made
10 a partition eminently fit.

11 MR. KEECH: I think the waters of the underlying lands should
12 be used as the Supreme Court has already decided. I think the
13 rules they have laid down are equitable.

14 MR. WIEL: If you leave the water to be drained out of an entire
15 region within the next few years, you are going to have the water
16 in the hands of a comparatively few people.

17 MR. KEECH: I think the owners of overlying lands should be
18 protected in the natural uses and for all artificial uses absol-
19 utely before you let a drop go out of the land.

20 MR. NEAR: Why, in one part of the Act, the undoubted ripar-
21 ian ownership should be required to develop his rights within a
22 certain time or would be subject to appropriation, and why a man
23 who owns overlying lands should have the right for useful pur-
24 poses, or anything that would be shown to be useful, as against
25 any appropriation of underlying waters, I cannot see. I do not
26 see why that distinction should be made.

27 MR. BAUMGARTNER: That is only Mr. Wiel's suggestion that that
28 should go in there.

29 MR. WIEL: In a surface stream you have a restricted supply
30 that is capable of being handled with more facility than an
underground supply. And you have this also: When a man digs a

1 well you cannot tell for a long time whether it interferes with
2 another's supply or not, but with a stream you can tell immediat-
3 ely. I think we can eliminate any riparian rights on streams
4 and let a man sink wells on his land because if you do not, the
5 risk of sinking wells under overlying lands will be so great
6 that few will do it.

7 MR. NEAR: In actual practice the danger of running up against
8 one is as great as the other. The creation of rights over
9 those vreated by law will work as greatly to the detriment of
10 the owner of riparian rights as the use you give the owner of
11 overlying lands.

12 MR. KEECH: That is what I forgot to say with regard to irrigat-
13 ors in our County. The seasons come in cycles. If a Commis-
14 sioner comes in and ascertains what the volume of water is in
15 wet seasons and issues permits accordingly, and then the water
16 goes down for a year and the dry cycle comes on, there is a
17 dearth, and when the shortage comes they are all pinched, in-
18 jured, destroyed almost, if they don't have the water. There
19 is the difficulty and the uncertainty with this measurement
20 and licensing. It will not give satisfaction and practical
21 results.

22 MR. NEAR: I think the owner of overlying lands should be
23 subject to some limitation as to his rights as a riparian owner.

24 MR. PARDEE: In other words, he should not have the right to
25 put the water in cold storage.

26 MR. NEAR: That is what I mean. Has a man not developing
27 overlying land to the fullest extent the right to prevent his
28 neighbor who is developing?

29 MR. CUTTLE: Within one year. He must have attempted to
30 develop water on his own land or he must show some reason for it.

1 You give a riparian proprietor five years to develop his right
2 and you give the overlying land owner only one year.

3 MR. PARDEE: I think both should be allowed cold storage, or
4 neither should be allowed cold storage.

5 MR. WIEL: There is more or less underground water all over the
6 State.

7 MR. CUTTLE: I know of many places where there is valuable
8 land that has no underground water.

9 MR. WIEL: But in most parts of the State you will find wells
10 and wind-mills. If you provide that these underground water
11 owners have the right to use the water whether they use the water
12 on their own lands or not, are you not taking away the rights
13 from a great many people in the State?

14 MR. CUTTLE: I do not understand we are taking it away. I say
15 if the overlying land owner within a year does not do something
16 to develop water on his own land, then the adjoining owner
17 should have the right to develop that water and use it for his
18 own use.

19 MR. WIEL: I think if you go out in the country and say to the
20 owners of wells you must exercise your right within a year or
21 your rights will be taken away, you will find much opposition to
22 your Bill throughout the country.

23 MR. LOMBARD: They very seldom put power pumping on the surface
24 strata.

25 MR. CUTTLE: I know a country that developed water and carried
26 it away for irrigation, and adjoining there were forty families
27 that had wells, and their wells dried up on account of the carry-
28 ing away of the water. They appealed to the Water Commissioners,
29 who had it stopped.

30 MR. SHORT: They could go into court and get that right. By
multiplying remedies you are making restrictions unnecessarily .

1 I believe a man should be protected in whatever right he has now,
2 and in whatever remedies he has now, but should be restricted in
3 the larger or further uses.

4 MR. CUTTLE: I do not suppose one of those families was worth
5 five hundred dollars, and they had no hope of carrying on a lit-
6 igation successfully. Under this Bill the Commission would have
7 the right to protect them. The Attorney would file a complaint,
8 and in such a case I think a Company developing water would be
9 very show in going further when a complaint is filed with the
10 Commission.

11 MR. SHORT: I know it is a case of the sheep and the goat.
12 Others have no right to have the State come in and protect them.
13 Why should you protect this particular class?

14 MR. CUTTLE: The sheep and the goat will have theirs too, pre-
15 sently. In this matter the Commission would have the power to
16 go out and investigate it themselves.

17 MR. SHORT: The Commission would have to go two or three hundred
18 miles to make an investigation in some cases.

19 MR. CUTTLE: I understand in the State of New York the Railroad
20 Commissioner goes right out to investigate the matter and the
21 question is decided right away. You cannot find any law in this
22 State where the State will take its law officers and go out in
23 the country and make an investigation to protect a private right.

24 MR. PARDEE: (Reads) "Section 16; The Water Commission shall
25 investigate such complaints and notify all parties concerned of
26 the time and place of hearing thereon, and the Commission shall
27 file its findings within three months after the hearing on such
28 complaint, and such findings shall be prima facie correct".

29 MR. LOMBARD: How about that three months? Better make it
30 fourteen months, and have it right, than take three months and

1 make a poor job.

2 MR. PARDEE: The idea was to fix a time within which the Com-
3 mission should decide.

4 MR. KEECH: Considering the experience we have had with the
5 constitution in regard to the courts, you may as well put it
6 anything.

7 MR. PARDEE: (Reads) "Section 17; Riparian proprietors or
8 appropriators of water from streams or underground waters may
9 file complaints against overlying land owners who are developing
10 water and carrying the same away from overlying land for bene-
11 ficial use on other than overlying lands, where it is alleged
12 that such development and carrying away of water is injuriously
13 diminishing the supply of water of such riparian proprietor or
14 appropriator."

15 MR. KEECH: Make it read: "Where such development or carrying
16 away of water is injuriously diminishing".

17 MR. WIEL: Suppose it is worded "Carrying of water from over-
18 lying land to other than overlying land". Suppose he is wast-
19 ing it. I suggest that it say "Carrying it away from overlying
20 land", no matter what he carries it away for.

21 MR. CUTTLE: No objection to that, that I can see.

22 MR. PARDEE: (Reads) "Section 18: Such complaint shall be
23 filed with the Water Commission of the State of California with-
24 in one year after the first injurious diminishing of water which
25 it is sought to prevent occurred. Such complaint shall be made
26 under oath, on forms provided or prescribed by the Water Com-
27 mission of the State of California".

28 "Section 19; The Water Commission shall investigate such com-
29 plaint and notify all parties concerned as to the time and
30 place of hearing and shall file its findings within three months
after the final hearing on such complaint, and such findings

1 shall be prima facie correct."
2 MR LOMBARD: I make the same objection as to the three months.
3 MR. PARDEE: (Reads) "Section 20; Upon application for the
4 right to appropriate and use underground water on other than
5 overlying land for useful and beneficial purposes, the State
6 Water Commission may grant a temporary permit for such ap-
7 propriation and use. But such temporary permit may be revok-
8 ed by the Water Commission at any time within eighteen months
9 after the granting of the same where it is shown to the satis-
10 faction of said Commission that such appropriation and use are
11 preventing overlying land owners who are using such underground
12 water on overlying land or others who have acquired the right
13 to use and are using such underground water on other than over-
14 lying land from securing the amount of water necessary for
15 such useful and beneficial purposes, to which they are entitled."
16 MR SHORT: Where they do grant a permit, of course the develop-
17 ment proceeds subject to the right of all others to protect
18 their just rights and interests. And if, after eighteen months,
19 the rights may be absolutely revoked, I do not think it would
20 be inducive to anybody to develop water under that class of a
21 permit.
22 MR CUTTLE: If you develop water you are subject to your
23 neighbor asking for an injunction to prevent your taking that
24 water away.
25 MR SHORT: Of course, anybody starts in with the understanding
26 that somebody may object on account of his invading his rights,
27 but he does not start with the understanding that the Commis-
28 sion may revoke his right at the end of eighteen months.
29 MR. CUTTLE: After the permit is revoked you have your day in
30 court.

1 MR. SHORT: No, I do not think so. If the Commission which
2 grants the permit has the right to revoke the permit, we have
3 no right to go into court. Under such a permit I do not think
4 we could advise anybody to invest any money, because such
5 arbitrary powers would end our existence.

6 MR. CUTTLE: I have the same case in mind. People came on this
7 land and took this water away. We could give a permit to take
8 the water if it did not interfere with the water used by others,
9 but if it did interfere with the water they were using the
10 Commission would stop it. He would have the same right to go
11 into Court. It might stop some development, but would it not
12 stop also a good deal of litigation?

13 MR SHORT: The Court can prevent you from injuring your neigh-
14 bors, but if you have the right to revoke the permit he is
15 dead. That is the end of it.

16 MR. KEECH: This is clearly a judicial power relegating them
17 to their action in damages instead of an injunction.

18 MR SHORT: I presume they could apply to the court and have
19 the court do what is here provided to be done by the Commis-
20 sion. The damages would have to be settled by the court instead
21 of by the Commission.

22 MR. PARDEE: (Reads) "Section 21: The Complaint of an over-
23 lying land owner against another overlying land owner shall
24 not be valid where the person complained of is developing and
25 using only such underground water for useful and beneficial
26 purposes only upon his own overlying land.

27 (b) The complaint of an overlying land owner, riparian
28 proprietor, or appropriator of underground water or stream flow,
29 against one who has complied with the provisions of this Act
30 and the regulations of the Water Commission of the State of
California for the developing and carrying away of underground

1 water from overlying land shall not be valid unless filed with
2 the Water Commission of the State of California within one year
3 after the actual development and carrying away of such water."
4

5

6

7

The further hearing of this matter was here continued
to Wednesday, May 29th, 1912, at ten o'clock A.M.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

1 May 29th, 1912: 10 o'clock A.M.

2 MR. CUTTLE. I would suggest that we hear from any of those
3 that have suggestions to make on what we have gone over to date
4 make them now.

5 THE CHAIRMAN. All right, let us hear from them.

6 MR. ADAMS. This has occurred to me: There seems to be a good
7 deal of argument over the subject of underground waters. I was
8 wondering, in drawing the bill, whether each special subject
9 should be treated entirely separately so that when you get to
10 special things to the legislature one special feature wouldn't
11 necessarily affect the other features.

12 THE CHAIRMAN. I think that is what is done now. I am famil-
13 iar with the underground water proposition, I have been over it
14 a half a dozen times; it seems to me it is separate.

15 MR. CUTTLE. It runs from about Section 8 to Section 20 cover-
16 ing the underground waters. It is all in one place, all to-
17 gether.

18 MR. ADAMS. I thought perhaps if Mr. Weill's suggestions were
19 put in one chapter that might emphasize the difference a little.

20 THE CHAIRMAN. You could just throw in a heading; that could
21 be done.

22 MR. BAUMGARTNER. The bill could be rearranged.

23 THE CHAIRMAN. Yes, it can be rearranged and fixed up.

24 MR. BAUMGARTNER. And I think there are one or two places in
25 there-- they were in the last draft I saw of it.

26 MR. ADAMS. In regard to Judge Short's objection to the bill
27 with reference to making appropriation of underground waters
28 necessary for other than overlying land, it seems to me his
29 point is well taken. If I understand him correctly, he has
30 this in mind: Instead of requiring an owner of overlying lands

1 to file an application to other than that land--

2 MR. SHORT. For use other than overlying land.

3 MR. ADAMS. Yes. The owner desiring to take underground wa-
4 ters for other than overlying land purposes, shall first make
5 application for a right to do so and whatever else is necessary
6 to do.

7 As I understood Judge Short, he may have been entirely
8 willing to have it so arranged that anyone should come in
9 and get the permit and the Commission should have discretion
10 to grant that permit.

11 THE CHAIRMAN. Yes, if it clearly went that far.

12 MR. KEECH. As I understand Judge Short's objection, it is
13 that we now have certain positive vested rights, and this
14 attempts to take them away and substitutes a mere opportunity
15 to acquire a right, the act of appropriation being that of a
16 right de novo, the act by the appropriation in connection with
17 the State and its agencies of acquiring and initiating a new
18 and different kind of a title; and he would much prefer that
19 the State would simply recognize the title they have and not
20 attempt to destroy it by putting some recent regulation upon
21 them.

22 MR. ADAMS. Do you see any objection to that?

23 MR. KEECH. No, only this: You have to make another classific-
24 ation; you substitute these permits; that will require a differ-
25 ent kind of regulation, it will have to be a distinct thing
26 from the appropriation. I can recognize the position of these
27 people, and I appreciate the position they are in, that they
28 would much prefer that their rights should be recognized as
29 legal rather than be taken away and the mere opportunity given
30 them to acquire other rights given.

1 MR. TAIT. Do the courts now recognize any positive right to
2 take the water away from overlying lands for use on other lands?

3 MR. KEECH. As I understand the decision, it is substantially
4 this: That owners of overlying lands are a community of them-
5 selves with a prior right, and that if that owner is satisfied,
6 that the surplus waters can be appropriated in the same manner
7 as the water in the stream. Under the law, the courts have
8 considered that the underground surplus waters from overlying
9 lands--- that they have a right to take those.

10 MR. BAUMGARTNER. Judge Short took the position that it was
11 an inalienable right, it was a vested right, a natural right of
12 the owner, not an appropriated right, not a right acquired by
13 appropriation. This bill provides it shall be a right to be
14 acquired by appropriation. That is what he is objecting to.
15 I am not saying anything about the facts, I am saying that is
16 Judge short's position--- not that it is a right by appropriat-
17 ion, but that it is a vested, fixed property right; and he says
18 "Now you propose to change that to a right by appropriation,
19 which is a less satisfactory thing to the investor, less stable,
20 less well-defined".

21 MR. ADAMS. There is another thing that the bill provides,
22 both regarding prairie lands and underlying lands, and the
23 definite period in which that is to be put to use.
24 There are thousands of acres of land that have underground water
25 which won't be developed for years and years and years, and
26 we propose to take away within a year those underground
27 rights.

28 MR. CUTTLE. I don't think so.

29 THE CHAIRMAN. That was changed.

30 MR. ADAMS. Take, for instance, the riparian rights.

1 MR CUTTLE. I am speaking of the underground waters. The ri-
2 parian rights, yes.

3 MR ADAMS. There are thousands of acres of riparian land.

4 THE CHAIRMAN. The point is, we do not want the cold storage
5 of these waters.

6 MR ADAMS. The end would be gained, I might agree with you--
7 I was thinking if you make the difference between the riparian
8 owner who realizes the value of its riparian character and the
9 riparian owner who does not.

10 THE CHAIRMAN. If they do not put that in cold storage.

11 MR. ADAMS. Segregate the riparian lands; let the people have
12 a definition made as to those riparian lands so that all this
13 riparian land on every stream can be placed and classified..
14 That would leave the thing open and clear.

15 MR. CUTTLE. They have five years in which to realize the
16 value of it and get busy; if they do not, somebody else ought
17 to.

18 MR. ADAMS. In five years could I get a permit declaring my
19 desire to have that water reserved?

20 THE CHAIRMAN. The five years in here is simply to have a basis
21 to work on.

22 MR. ADAMS. You are setting a time within which the improve-
23 ments should be made.

24 THE CHAIRMAN. The riparian rights. There is a grave doubt
25 as to whether you can take it away from them, but we feel that
26 it should be put up to the Supreme Court. As mentioned a while
27 ago, we know that the court has changed its mind on some things.

28 MR. ADAMS. There is one thing, I do not know whether it has
29 been covered or not, but it is the need of some of the great
30 irrigation companies to have definite assurance that when they

1 start to develop an irrigation project; that before they get
2 their project developed that it will not be taken away from
3 the. For instance, under the Oregon, Wyoming or Nebraska law, in
4 the beginning of a project of say ten thousand acres they fix the
5 amount of water that they will need and make application to the
6 State that they will need that entire amount of water; they
7 can't put that water to use in the first year, nor they can't
8 for years and years.

9 THE CHAIRMAN. Our law provides for that.

10 MR. ADAMS. It doesn't require them to use it within five or
11 ten or fifteen years?

12 THE CHAIRMAN. I think there is a limit set.

13 MR. ADAMS. Take down in the Valley, that isn't developed yet,
14 but someone is going to come in and they will have to fight for
15 their rights; they have there a quarter of a million acres of
16 land. It is, I think, a safe thing to state that that land is
17 all to be developed within ten or fifteen years; they have been
18 now twenty-five years on that project.

19 THE CHAIRMAN. They work up there, of course, under very ad-
20 verse circumstances.

21 MR. ADAMS. They were in trouble for a good many years; it has
22 been eight years, eight or nine years since they began to get
23 actually started.

24 MR. CUTTLE. Put the water to beneficial use according to the
25 provisions, that is covered so that they would have that water
26 if they used that water with gradual increase.

27 MR. BAUMGARTNER. I think it is well to provide for emergen-
28 cies of that kind; but it does provide, in a general way, that
29 a riparian owner shall file application upon notice from this
30 Commission to do so as to what his intentions are and what his

1 purposes are.

2 MR. ADAMS. I was not thinking of an appropriator. These con-
3 ditions we meet with whenever we have any irrigation project,
4 any development.

5 MR. CUTTLE (Reading): "All water or the use of water which
6 "has been heretofore appropriated and which has not been put,
7 "or which has ceased to be put, or which may hereafter cease to
8 "be put, or which may hereafter be appropriated and cease to
9 "be put, to some useful or beneficial purpose, or which is not
10 "now in process of being put to useful purpose or beneficial
11 "use as provided in this act, with due diligence in proportion
12 "to the magnitude of the work necessary properly to utilize
13 "for the purpose of such appropriation such water or such use
14 "of water, is hereby declared to be unappropriated."

15 If they appropriate it, and are proposing to put it
16 to beneficial use in proportion to the magnitude of the work,
17 they are complying with the conditions here, even though it may
18 take five or ten years or some other length of time.

19 MR. ADAMS. That is one feature of the bill which should be in
20 there, where to get the required permit in the first place for
21 appropriating water.

22 MR. BAUMGARTNER. (Reading) "Actual construction work upon the
23 "project for which the water or the use thereof is applied for
24 "shall begin within six months from the date of the approval
25 "of the application, and the construction of the work there-
26 "after shall be prosecuted with due diligence in accordance
27 "with the terms of the approved application and the rules and
28 "regulations of said commission; and said work shall be com-
29 "pleted in accordance with the terms of the approved applica-
30 "tion, but the period of completion shall not exceed five years

1 "from the date of said approval. The water commission, how-
2 "ever, may, for good cause shown, extend the time within which
3 "said work shall be completed, but no such extension shall be
4 "for a longer period than one year. And if such work be not so
5 "commenced, prosecuted and completed as provided in this act,
6 "the water commission may, after due notice to the applicant,
7 "revoke its approval of the application, and immediately upon
8 "such revocation any priority of right under said application
9 "shall lapse."

10 MR. ADAMS. The point is whether any project that was started
11 would have assurance that it would in the future, unless there
12 was an abandonment of the work, it would have the opportunity
13 to get a definite permit even for fifty years in the future
14 to develop, if necessary. We can't do all the development in
15 thirty or forty or fifty years. Every company that develops
16 land is going to have portions of the land that is not irrigated
17 after twenty-five or thirty years of development. The law in
18 other States covers that by making it discretionary with the
19 board of control to grant that permit.

20 THE CHAIRMAN. Judge Short said yesterday in effect that this
21 was uncertain and that investors will not put up the necessary
22 money for development. For myself, I have no sort of sympathy
23 with that at all because I believe that investors are as reason-
24 able as any other people and they won't begin that sort of
25 thing where it is on the square; and the law gives them recourse
26 to the courts. That was the criticism made.

27 MR..... That criticism was addressed to the taking
28 away of the underground waters.

29 THE CHAIPMAN. It applies to the other; it was made in good
30 faith, too.

1 MR..... It was our idea that as long as the Water
2 Commission uses its discretion, that we would like to see this
3 clause 28 apply to all appropriated waters, whether underground
4 or riparian.

5 THE CHAIRMAN. All appropriatable waters?

6 MR.....Yes.

7 MR. BAUMGARTNER. Probably made more liberal?

8 MR..... This first clause makes it an indeterminate
9 franchise as to actual appropriated water as long as the bene-
10 ficial use of the water is shown-- it has got to be an inde-
11 terminate franchise.

12 MR. ADAMS. There are two things that are involved, the bene-
13 fits of the work and the actual irrigation. If I should ap-
14 ply for a permit for a water plant I should be given a permit
15 according to the water necessary, according to the entire acre-
16 age; then I would be required to complete that work within five
17 years, although that would be a hardship, perhaps, because it
18 would require longer; but I would be required to complete my
19 work within five years-- that doesn't mean that I would have to
20 complete the use of the waters, because that would be impos-
21 sible-- that would require thirty or forty years, possibly.

22 MR. CUTTLE. I understand your statement of thirty or forty
23 years an exaggerated term. For instance, some company might go
24 on a stream and say, "We desire to appropriate the waters, the
25 water rights, in this stream, and we do not know that it will
26 all be used before thirty or forty years; in the meantime, we
27 will go on and build the canal there for irrigation as the land
28 is taken up, so far as we can; but before the end of five years
29 somebody might want to come in on that stream and say that they
30 could put this water to beneficial use within twelve months."

1 MR. ADAMS. How long would you say it would take to develop
2 on the Fresno River?

3 MR..... Seventy.

4 MR. ADAMS. How much of the land under your canals not ir-
5 rigated is subject to irrigation?

6 MR..... For the gravity system, that system is com-
7 pleted.

8 THE CHAIRMAN. It has taken you forty years to complete the
9 rest?

10 MR..... I do not say forty years, I am not in the
11 irrigation business; I am in the colonizing business, and there
12 are many things, I suppose, that have to be taken into consider-
13 ation. In order to sell land, the land must be supplied with
14 water.

15 MR. KEECH. As I understand the law, they are now required to
16 file their notice to have their right relate back, which speci-
17 fies the quantity; and within sixty days begins the erection of
18 the work and proceeds with due diligence, no time being fixed.
19 And I think the courts have upheld that. Ten years, in some
20 cases, has not been an unreasonable time; but I don't know of any
21 thirty or forty years, and the proposition as presented is that
22 the preparation for making the development must necessarily dis-
23 pose of the very lands to be irrigated before they can actually
24 apply them, and that is the limitation upon their power. The
25 question is whether you will provide in the law for a company
26 taking a large tract of land and seeking a permit for enough
27 water to irrigate it and allow them time enough not only to con-
28 struct the work but to conduct the water to the land and se-
29 cure the settlers and establish a colony and develop the land, or
30 whether you will allow them to get those rights which it may re-

1 quire them thirty or forty years to complete, and in the mean-
2 while shut off the individual settlers and the people that might
3 be after the development and apply the water in five or ten
4 years.

5 MR..... I would like to make a statement because I
6 think this is a critical point. I am sorry Judge Short can't
7 be here this morning; I have got to be away myself in a very
8 short while. The topographical position has a great deal to do
9 with this question. Down in Fresno County I may say we now
10 have pretty nearly four hundred thousand acres under irrigation,
11 we are covering four hundred thousand acres, and have approxi-
12 mately four hundred miles of main canals. The topographical
13 position there was such that practically nobody could come in
14 and take very much water to the territory that we first started
15 out to cover. And we have had to have all this time to get
16 properly constructed--we had to wait for conditions to be such
17 that people would come into that country and take up those lands
18 and seek for water and apply it to beneficial uses. On such
19 a case as Mr. Adams submits, it may be ther same or it may not,
20 where a stream has a very narrow valley to it, and it is pro-
21 posed to take the water out of that stream and to hold up a
22 large appropriation for some company up above, that might be a
23 manifest injustice to people down below, or below for those
24 above; but where the territory such as ours is, it can't be
25 any injustice because they had the power of coming through
26 and the water was under the State law. And I want to say
27 that every drop of not only the gravity water which could be ap-
28 propriated on Kings River has been appropriated and been ap-
29 propriated to beneficial uses, but all the water that we con-
30 trol has been put to beneficial uses, and some three or four

1 thousand acres more received,

2 THE CHAIRMAN. If they would do that all over the State there
3 would be no use for a water commission.

4 MR..... I would recommend it. Judge Short and I are
5 very anxious to aid in getting some bill that will help Cali-
6 fornia. We feel, without bragging, that we have an experience
7 that should be useful for the framing of a bill; and we want
8 to prepare certain notes, and make certain suggestions, if pos-
9 sible, so that we can have this a working bill to avoid litiga-
10 tion. And from my experience as an irrigator, and in that work
11 not only in California but in the United States, I would recom-
12 mend some conciliation or arbitration board provided for in
13 this bill.

14 THE CHAIRMAN. What is the matter with the Commission as an ar-
15 bitration board?

16 MR.....Let the people of California try to conciliate
17 and not throw these matters into court.

18 THE CHAIRMAN. That is just what we are doing-- just what we
19 want to do.

20 MR..... And if I can give you any help in that I will
21 be very glad to devote any time you want to the solution of it.
22 Because when you get on the subject of these waters, as to ascer-
23 taining what is appropriated and what is not, and what is ripar-
24 ian and what is not,- what is appropriated and unappropriated,
25 you would get into such litigation in the courts that you
26 couldn't untangle it in a hundred years; but if you have a con-
27 ciliation board and you get down to fight, you have got the peo-
28 ple to taking the substance and dropping the shadows, then you
29 will arrive at something that will be beneficial to the State
30 of California and its people.

1 THE CHAIRMAN. I couldn't have said it half as well as you
2 have said it, and the Commission hopes, sincerely hopes, that
3 you will not wait to be asked, but we will ask you, and we ask
4 you now, to help at any time by suggestions or anything that you
5 think you can help on; we ask you to volunteer them, and that
6 applies to everybody else, too; don't hold back.

7 MR. BAUMGARTNER. I want to ask you, in your judgment, if the
8 economic conditions and the practical or engineering conditions
9 to a large extent will they not regulate those matters equita-
10 bly? For instance, the case that Mr. Adams cites, or in your
11 own experience, has there been any danger at any time to your
12 interests by reason of this—suppose this Commission was in
13 existence and the provisions practically as we have them out-
14 lined here and that were the law, has there been any place that
15 water could be used to greater advantage than you are using it?

16 MR. ADAMS. I don't think so, sir.

17 MR. BAUMGARTNER. My thought is this: If a portion of the
18 country were quite rapidly developing and it took thirty-five
19 or forty or fifty years for a man to work out his scheme, it
20 seems to me in the average case that the man would not be in
21 any danger because nobody else could use that to better advan-
22 tage, and I think you will agree with me when I say that in
23 such a case as that the Commission would be justified in ex-
24 tending the time.

25 MR. ADAMS. I think it is established in all the western
26 states that anybody who starts a project, when they are given
27 a permit to start the project, that they will have water for
28 that unless they fall down on their side—they are given
29 priority.

30 MR. BAUMGARTNER. They wouldn't start any project unless it

1 was the most favorable project on that stream. Take the Sac-
2 ramento Valley Irrigation Company. Their General Manager tole
3 me that they were exceedingly anxious for some kind of a law
4 that would give a definite statement as to what-- as to their
5 permit, - as to what water they could use.

6 MR..... They have more than that; they have got a
7 federal permit.

8 MR. ADAMS. That is only as to the navigability.

9 MR. KEECH. I understand, as Mr. Adams states, that as that
10 amount is provided for in our law here it is true that no per-
11 mit is granted under the present system except the party states
12 the whole amount; and then by due diligence gradually completes
13 the work, diverts the water and increases the use of that total
14 amount, and he must do that within a reasonable time and with
15 due diligence; and it is not intended by the act to vary from
16 that-- it would be a definite amount.

17 MR. ADAMS. The only thing which the law would change would
18 be that it would be such a definite period of time within which
19 the use must be completed.

20 MR. KEECH. And that has already been discussed. It seems to
21 me, with the suggestions made by the Commission themselves,
22 that if they were vested with the power to extend the time from
23 year to year, only having it "within a reasonable time", they
24 to determine each year or each periodic time whether the par-
25 ty was still in good faith and exercising that diligence, it
26 seems to me that that would be safest in their hands.

27 MR. POTTER. Give the Commission that power?

28 MR. KEECH. Yes, give the Commission that power, and let them
29 see that due diligence is exercised, and good faith; let the
30 Commission have power to determine at each periodic time whe-

1 ther those things were being exercised.

2 MR. ADAMS. I would like to make a suggestion that the Ore-
3 gon law be substituted for this, because it states it a little
4 more definitely, so that there is less doubt in the mind of
5 the company; that has been found to be the best in Oregon.

6 MR. LOMBARD. I would like to suggest that we get away from
7 that term of "due diligence". That term might tie the Com-
8 mission up; I would suggest that it be stated in some differ-
9 ent way.

10 MR. CUTTLE. I know that there are some people who would
11 say, "You are giving discretionary power to a commission ap-
12 pointed by one man, and we won't have anything to do with it".

13 MR. POTTER. The Commission has got to have a good deal of
14 discretionary power to do any good at all.

15 THE CHAIRMAN. Certainly.

16 MR. KEECH. There is one very suggestive phrase used by Mr.
17 Nair, and that is emphasized by the situation in his great com-
18 pany that we have found, and that he thought should be brought
19 out a little more clearly, and it is this: The topography and
20 economic conditions of division. Our entire irrigation system
21 on the west side of the Santa Ana River in Orange County is
22 situated-- comprises some fifty thousand acres; and in its
23 partition there was allotted to each claimant, tenant in com-
24 mon, a definite portion, and a provision made that each one
25 of them had a right to enter upon the tract and water for them
26 would be diverted from the river. In actual practice it was
27 found uneconomical to allow each one of them to exercise that
28 right. The topographical conditions required-- as they prob-
29 ably require on every river in this State-- that at favorable
30 points one diverting and distributing system be inaugurated to

1 cover a certain topographical area, a certain geographical area
2 with topographical features; and the result was that there was
3 nothing satisfactory done until one corporation, representing
4 all the owners, united and have one diverting and distributing
5 system. Such a system requires much more care and time to al-
6 low of its complete carrying out. As Mr. Adams has said, it
7 may be wise and necessary for the Commission to adopt a scheme
8 along that line, although it would take longer for its complete
9 initiation and operation than the slower systems and would cut
10 out the possibility of any other-- or the advisability of any
11 other small divisions and applications, and therefore I be-
12 lieve that that topographical feature that Mr. Nair specified
13 here is such a strong element in the situation, in the econo-
14 mic, the engineering and economic situation, that the Com-
15 mission should have power to allow large tracts to be taken up
16 and developed under one system.

17 MR. ADAMS. As to what Mr. Keech says about that topographic-
18 al feature governing: Take, for instance, the Feather River,
19 the American River, and other rivers entering the Sacramento
20 River; there are large areas of land on which that water can
21 be used; there isn't water enough there to irrigate all the
22 land that is tributary; it has got to be done in units, and it
23 will be away beyond our time before the thing is under con-
24 trol, if ever.

25 THE CHAIRMAN. I think this bill provides that the Com-
26 mission may, in its discretion, grant permits for the use of
27 the water.

28 MR. GLAVIS. I might add that the Water Commission now uses
29 that discretion. There was a filing on Bishop Creek; the fil-
30 ings were made and were refused, we refused an application for

1 a permit and because it wouldn't be advisable and would work
2 an injury by overdevelopment.

3 MR. ADAMS. The laws require the Commission to grant the per-
4 mit if the water is there. There is only one State, the State
5 of Idaho, I think, that the State Board was given authority to
6 refuse the granting because it would be against public policy;
7 and that was declared unconstitutional.

8 THE CHAIRMAN. Section 21-(a): "The complaint of an over-
9 "lying land owner against another overlying land owner shall
10 "not be valid where the person complained of is developing and
11 "using only his proportional part of such underground water
12 "for useful and beneficial purposes only upon his own overly-
13 "ing land."

14 MR. LOMBARD. I put a question mark after "proportional part",
15 indicating that it is a question to say what is the proportional
16 part, or whether it is the same overlying land and water.

17 MR. CUTTLE. I think Mr. Keech wanted the proportional part
18 in there.

19 MR. KEECH. If I didn't, I do now.

20 THE CHAIRMAN. It is somewhere in here that the overlying land-
21 owner has the right to complain-- for instance, if you and I
22 own adjoining overlying lands, and you put down a well and it
23 interferes with my well, they act in accordance with a decis-
24 ion in that case to the effect that I have the right to go and
25 complain if it is injurious. This fixes that.

26 MR. BAUMGARTNER. This would apply to the particulat equity
27 in the case.

28 MR. POTTER. That only applies now as it is laid down in com-
29 mon law books.

30 THE CHAIRMAN. We will go to Section "b": "The complaint

1 "of an overlying land owner, riparian proprietor, or appropria-
2 "tor of underground water or stream flow, against one who has
3 "complied with the provisions of this act and the regulations
4 "of the Water Commission of the State of California for the de-
5 "veloping and carrying away of underground water from overlying
6 "land shall not be valid unless filed with the Water Commission
7 "of the State of California within one year after the actual
8 "development and carrying away of such water".

9 Why for the developing and carrying away of under-
10 ground water from overlying land?

11 MR. CUTTLE. Well, there are other conditions.

12 THE CHAIRMAN. Well, you will have to specify them. "...for the
13 "developing and carrying away of underground water", I should
14 judge should come out; I am not sure, though. The carrying
15 away, is the thing; we don't care anything about the developing
16 of it before, we don't care anything about it until the actual
17 carrying away has been done.

18 MR. TAIT. Why not substitute the word "appropriating" for the
19 words "developing and carrying"? That is in a previous clause.

20 THE CHAIRMAN. Yes.

21 MR. CUTTLE. Why not say "the appropriation and use of such
22 waters"?

23 MR. KEECH. Instead of "developing and carrying away", in-
24 sert "appropriation and use".

25 MR. CUTTLE. Do you want to add there "has been begun"?

26 THE CHAIRMAN. That is the beginning of it-- "within one year
27 after it shall have been begun".

28 MR. LOMBARD. Isn't that the first point at which the regula-
29 tions of the Water Commission have been mentioned?

30 THE CHAIRMAN. Yes. But they come in in some of the following

1 sections in extenso. Section 22, if you are through with Sec-
2 tion 21. (Reading) "Section 22-- No complaint of any riparian
3 "proprietor or appropriator of water from any stream of the
4 "State of California charging the diminishing of the water of the
5 "stream shall be valid where such complaint is based on the ac-
6 "tion of an overlying^{land} owner in developing and using only his
7 "proportional part of such water for beneficial and useful pur-
8 "pose upon his own overlying land only."

9 MR. CUTTLE. This has reference to the riparian appropria-
10 tor, not to his having the right to the percolating waters?

11 THE CHAIRMAN. Yes.

12 MR. KEECH. It is so limited, I think but no doubt it is cor-
13 rect under the present law.

14 MR. CUTTLE. He would have that right under the present law.

15 MR. KEECH. He would have that right; it is a good thing to
16 modify it.

17 THE CHAIRMAN. If the present laws would have been modified, we
18 would not have to come here.

19 "Section 23:- When the commission shall have investi-
20 "gated the right to water or to the use of water in any stream
21 "system or part of any stream system, or other source of water
22 "supply, it shall cause a notice to be prepared declaring that
23 "fact and also setting a date and place when and where a hearing
24 "shall be had to determine such right. At such time any party
25 "or parties claiming any right, title or interest in or
26 "to the water of such stream system, part of stream system, or
27 "other source of water supply, or in or to the use of said wa-
28 "ter, may present to said water commission any facts, by depo-
29 "sition or oral sworn testimony, in support of any such claim.
30 " At least thirty days before the date when such testimony is to

1 "be presented, said notice shall be served personally upon all
2 "claimants the names and addresses of whom are known. Where
3 "the person on whom service is to be made resides out of the
4 "state, or has departed from the state or cannot after due
5 "diligence be found within the state, or at the place desig-
6 "nated in any notice he may have filed under section one thousand
7 "one hundred and sixty-three of the Civil Code, or is a for-
8 "eign corporation having no managing or business agent,
9 "cashier or secretary within the state, and the fact appears by
10 "affidavit to the satisfaction of the commission, the com-
11 "mission may make an order that the service be made by pub-
12 "lication of the notice, and a copy of said notice shall be re-
13 "corded in the office of the county recorder of every county
14 "in which the stream system, or part thereof under investigation
15 "is situated, at least thirty days prior to the date as herein-
16 "above provided. Where all of the claimants are not personally
17 "served as provided herein said notice shall be published once
18 "a week for four successive"--"consecutive" would be a better
19 "word than "successive"-- "weeks in some newspaper of general
20 "circulation in each county in which the stream system or por-
21 "tion of stream system or other source of water supply under
22 "investigation is situated. Such publication shall be com-
23 "pleted at least thirty days prior to the date set for the
24 "presentation of such testimony, and shall be a notice to all
25 "persons, except as herein provided, and shall be equivalent to
26 "a personal service upon all claimants whose addresses are not
27 "known. A copy of said notice shall also be posted in a con-
28 "spicuous place for thirty days prior to said date of hearing
29 "in the office of the water commission. Where the claimant to
30 "any of the rights under investigation is an association of

1 "persons, or a domestic or foreign corporation, personal ser-
2 "vice upon the president, secretary or manager thereof, or upon
3 "the person designated by law to receive service of process,
4 "shall be service upon all of the members thereof, or of the
5 "corporation, for the purpose of this act. When the notice of
6 "such hearing is recorded as herein provided any subsequent"
7 "transfer of any rights therein shall be made subject to such
8 "notice, and no additional service need be made upon persons
9 "acquiring such right subsequent to the date of record. For
10 "the purpose of this act, the commission is empowered to resort
11 "to any source of information available. The evidence intro-
12 "duced at such hearing shall be reduced to writing and certified
13 "under the seal of this commission. The commission shall make
14 "and file in its office in writing its findings of fact upon
15 "all matters concerning which evidence shall have been intro-
16 "duced before it, which in its judgment have bearing on the mat-
17 "ters sought to be determined by said hearing. The findings of
18 "the commission so made and filed, when properly certified under
19 "the seal of the commission, shall be admissible in evidence in
20 "any action, proceeding or hearing before the commission or
21 "any court in which the commission, the state or any officer,
22 "department or institution thereof, or any county, city and coun-
23 "ty, municipality or other body politic, or any claimant whose
24 "rights are effected"--

25 MR. POTTER. That word should be "affected", shouldn't it, in
26 the eighteenth line?

27 THE CHAIRMAN. Yes. (Continues reading) "... by said deter-
28 "mination, may be interested, whether arising under the pro-
29 "visions of this act or otherwise. After such hearing, the Com-
30 "mission may, upon good cause shown, or upon its own motion,
"order a reinvestigation of such rights and grant a rehearing to

1 "the parties interested therein and may permit additional af-
2 "fidavits to be filed or new testimony to be presented, but no
3 "such rehearing or reinvestigation shall be had unless request-
4 "ed within one year from the date of such determination."

5 MR. CUTTLE. Wouldn't bind the Commission not to have a mo-
6 tion for reinvestigation unless it was taken up within one year?

7 THE CHAIRMAN. There would be an end to those things.

8 MR. CUTTLE. We might overlook something.

9 THE CHAIRMAN. Yes, if we do it is unfortunate; but there
10 would be a time set, whether a year or longer or shorter, I
11 don't know.

12 MR. CUTTLE. I should think one year would be too short for
13 the Commission.

14 THE CHAIRMAN. Make a note of that-- whether it is one year
15 or longer or shorter, there should be, I think, a time set.

16 MR. LOMBARD. The proposition of due diligence, it seems to
17 me that ought to be left to the discretion of the Commission.

18 THE CHAIRMAN. The Commission determines what due diligence is

19 I will now read Section 24: "Section 24(a): The
20 "commission and each commissioner shall have the power to ad-
21 "minister oaths, certify to all official acts, and to issue
22 "subpoenas for the attendance of witnesses and the production
23 "of papers, maps, books, accounts, documents and testimony in
24 "any inquiry, investigation, hearing or proceeding in any part
25 "of the State. Each witness who shall appear by order of the
26 "commission or a commissioner, shall receive for his attendance
27 "the same fee and mileage allowed by law to witnesses in civil
28 "cases, which amount shall be paid by the party at whose re-
29 "quest such witness is subpoenaed. When any witness who has not
30 "been required to attend at the request of any party shall be

1 "subpoenaed by the commission, his fees and mileage shall be
2 "paid from the funds appropriated for the use of the commission
3 "in the same manner as other expenses of the commission are paid
4 "any witness subpoenaed except one whose fee and mileage may
5 "be paid from the funds of the commission, may, at the time of
6 "service, demand the fee to which he is entitled for travel to
7 "and from the place at which he is required to appear, and one
8 "day's attendance. If such witness demands such fees at the
9 "time of service, and they are not at that time paid or tender-
10 "ed, he shall not be required to attend before the commission
11 "or commissioner as directed in the subpoena. All fees and mile-
12 "age to which any witness is entitled under the provisions of
13 "this section may be collected by action therefor instituted
14 "by the person to whom such fees are payable."

15 MR. KEECH. That last portion, it is true, is good law by analo-
16 gy, but it is almost impracticable.

17 THE CHAIRMAN. This is done sometimes where there are a good
18 many witnesses.

19 MR. KEECH. Yes.

20 THE CHAIRMAN. (Reading) "(b) The superior court of the
21 "county or city and county in which any inquiry, investigation,
22 "hearing or proceedings may be held by the commission or any
23 "commissioner shall have the power to compel the attendance of
24 "witnesses and the production of papers, maps, books, accounts,
25 "documents and testimony as required by any subpoena issued by
26 "the commission or any commissioner. The Commission or the
27 "commissioner before whom the testimony is to be given or
28 "produced, in case of the refusal of any witness to attend or
29 "testify or produce any papers required by such subpoena, may
30 "report to the superior court in and for the county or city

1 "and county in which the proceeding is pending, by petition,
2 "setting forth that due notice has been given of the time and
3 "place of attendance of said witness, or the production of said
4 "papers, and that the witness has been summoned in the manner
5 "prescribed in this act, and that the witness has failed and re-
6 "fused to attend or produce the papers required by the sub-
7 "poena, before the commission or commissioner, in the cause or
8 "proceeding named in the notice and subpoena, or has refused to
9 "answer questions propounded to him in the course of such pro-
10 "ceeding, and ask an order of said court, compelling the wit-
11 "ness to attend and testify before the commission. The court
12 "upon the petition of the commission or such commissioner, shall
13 "enter an order directing the witness to appear before the
14 "court at a time and place to be fixed by the court in such or-
15 "der, the time to be not more than two days from the date of
16 "the order, and then and there show cause why he has not re-
17 "sponded to said subpoena."

18 Does that cover the answering of questions, too?

19 MR. CUTTLE. When they get him before them, they can make him
20 answer questions.

21 THE CHAIRMAN. (Continues reading): "A copy of said order
22 "shall be served upon said witness. If it shall appear to the
23 "court that said subpoena regularly issued by the commission or
24 "acommissioner, the court shall thereupon enter an order that
25 "said witness appear before the commission or said commission-
26 "er at the time and place fixed in said order, and testify or
27 "produce the required papers, and upon failure to obey said or-
28 "der, said witness shall be dealt with as for contempt of
29 "court."

30 Anything there?

1 MR. KEECH. It may require editing there.

2 THE CHAIRMAN. Yes. (Reading) "(c) The commission or any
3 "commissioner or any party to a proceeding before the commission
4 "or a commissioner may in any investigation or hearing before
5 "the commission, cause the deposition of witnesses residing
6 "within or without the state to be taken in the manner pre-
7 "scribed by law for like depositions in civil actions in the
8 "superior courts of this state, and to that end may compel the
9 "attendance of witnesses and the production of books, documents,
10 "papers and accounts.

11 "(d) No person shall be excused from testifying or from
12 "producing any book, map, document, paper or account in any in-
13 "vestigation or inquiry by or hearing before the commission or
14 "any commissioner, when ordered to do so, upon the ground that
15 "the testimony or evidence, book, map, document, paper or ac-
16 "count required of him may tend to incriminate him or subject
17 "him to penalty or forfeiture. But no person shall be prosecut-
18 "ed, punished or subjected to any penalty or forfeiture for or
19 "on account of any act, transaction, matter or thing concern-
20 "ing which he shall, under oath, have been compelled, or shall
21 "have testified or produced documentary evidence; provided, that
22 "no person so testifying shall be exempt from prosecution or
23 "punishment for any perjury committed by him in his testimony.
24 "Nothing herein contained shall be construed as in any manner
25 "giving to any public utility or person immunity of any kind."

26 MR. BAUMGARTNER. It seems to me it gives an immunity just
27 above there.

28 THE CHAIRMAN. It does; it gives him immunity if he goes in and
29 testifies about anything; he may go in and testify that someone
30 did a certain thing on a certain day and thereby give himself an

1 immunity bath. It is like a certain gentlemen who went before
2 a certain United States Court some time ago to testify in re-
3 gard to things which were of no general benefit to anybody or
4 of any hurt to them, and Judge Anderson decided they were im-
5 mune from any further prosecution for anything that was done in
6 connection therewith. They got off.

7 (Reading) "Section 25: A fill and accurate record
8 "of business or acts performed by the commission or any member
9 "thereof in pursuance of the provisions of this act shall be
10 "kept and be placed on file in the office of said water com-
11 "mission."

12 MR. KEECH. It may be said that is a common practice in pro-
13 ceedings in cases where the individual couldn't be convicted
14 without his own testimony; therefore, the immunity bath doesn't
15 aid him materially; by giving to him and securing his dis-
16 closures, the main question as to which the evidence is directed
17 is very much aided.

18 THE CHAIRMAN, I don't object at all to the immunity bath; but
19 I do object to the man going on the stand in a certain case and
20 making some immaterial statement, giving immaterial testimony,
21 testimony immaterial to his own act and thereby securing immu-
22 nity for his own act which he hasn't mentioned at all; and this
23 seems to be broad enough to do that-- at least, it hints at
24 it pretty strongly. We will go over that very thoroughly.

25 MR. TROWBRIDGE. Hadn't we better say there "cashier or deputy
26 cashier", right straight through?

27 MR. KEECH. The deputy can always act for the chief officer--
28 that is the law that applies in all of our courts; for in-
29 stance, the sheriff can do certain things, or his deputy, eith-
30 er of them, and the law does not specify, does not have to.

1 THE CHAIRMAN. My experience is that if you have a multitude
2 of deputies and subordinates and they are specifically mention-
3 ed in your act, you run up against the legislature, which is
4 very loath to have these and to go to that expense. Experienca
5 has docet me a good many times on that.

6 (Reading) "Section 26: The commission shall take
7 "charge and collect the following fees: for copies and records
8 "not required to be certified or otherwise authenticated by the
9 "commission, ten cents for each folio; for certified copies of
10 "official documents and orders filed in its office, fifteen
11 "cents for each folio and one dollar for every certificate un-
12 "der seal affixed thereto; for certified copies of evidence
13 "and proceedings before the commission, fifteen cents for each
14 "folio. The commission may fix reasonable charges for publica-
15 "tions issued under its authority. All fees charged and col-
16 "lected under this section shall be paid, at least once each
17 "week, accompanied by a detailed statement thereof, into the
18 "treasury of the state to the credit of the Water Commission."

19 MR. KEECH. I think these charges are unnecessarily large.

20 THE CHAIRMAN. This is taken from the Railroad Act, as I re-
21 member, verbatim.

22 MR. KEECH. Is it?

23 THE CHAIRMAN. Yes.

24 MR. KEECH. I do believe that ten cents a folio is ample. Take
25 this page, for instance; it will run three folios on that page,
26 and maybe more, that would be thirty cents for the page. They
27 have a method now by using the phonograph and dictating into
28 the phonograph and multiplying copies, employing themselves
29 cheaper experts and doing an immense amount of business-- they
30 make more-- the reporters in Los Angeles make more than some of

1 the lawyers at the bar.

2 THE CHAIRMAN. Maybe they are entitled to it.

3 MR. KEECH. Their fingers are better than the lawyers' brains,
4 they are more efficient.

5 THE CHAIRMAN (Reading): "Section 27: Any person, firm, asso-
6 "ciation or corporation may apply for and secure from the com-
7 "mission a permit for any unappropriated water or the use of
8 "unappropriated water within this state in conformity with
9 "such rules and regulations as may be adopted from time to time
10 "by such Water Commission, and any application made in conform-
11 "ity with such rules and regulations, or with any law applicable
12 "to the appropriation of water, shall give a priority of right
13 "for such water or the use thereof to the applicant until such
14 "application shall have been approved or rejected by said com-
15 "mission; provided that such priority shall continue only so
16 "long as the rules and regulations of the Water Commission
17 "shall be followed by the applicant. Upon the approval of any
18 "application by the Commission, said approval shall give prior-
19 "ity of right, and shall give the right to take and use the
20 "amount of water for the period allowed by said commission in
21 "the approval of such application, but only to the extent and
22 "for the purpose or purposes allowed in said approved ap-
23 "plication; provided, further, that any application made in a
24 "bona fide attempt to conform to said rules and regulations,
25 "or to any law applicable to the appropriation of water which
26 "shall not be made in conformity therewith, shall secure to
27 "the a pplicant a priority of right until he shall have been no-
28 "tified by said commission in what respect his application is
29 "defective, and said applicant shall be allowed sixty days after
30 "notice of said defect in which to file an amended application;

1 "provided, further, that any priority of right secured under this
2 "section shall not be effective for more than thirty days after
3 "service or notice of such approval, personally or by register-
4 "ed mail, on the applicant, unless within said period of thir-
5 "ty days a true copy of said approved application upon which
6 "such priority is based shall have been filed in the office of
7 "the recorder of the county or city and county in which the wat-
8 "er is to be diverted."

9 MR. KEECH. That gives the Commission very large discretion
10 as to all the rules of application and granting of licenses;
11 but specifically provided as to some things, as to the form of
12 the application; it seems to me it is very general as to the
13 substance of the main matter and very specific as to what I
14 should consider as incidental.

15 MR.....I should think that in these matters of ad-
16 ministration, and so on, they should be left in the hands of
17 this Commission to be created so that it can grow as need shows
18 the necessity for growth without putting the thing at the pres-
19 ent time into a cast iron form. I think your suggestion is a
20 good one and I see no reason why it shouldn't be adopted.

21 THE CHAIRMAN. (Reading): "Section 26; Actual construction
22 "work upon the project for which the water or the use thereof
23 "is applied for shall begin within six months from the date of
24 "the approval of the application, and the construction of the
25 "work thereafter shall be prosecuted with due diligence in ac-
26 "cordance with the terms of the approved application and the
27 "rules and regulations of said commission; and said work shall
28 "be completed in accordance with the terms of the approved ap-
29 "plication, but the period of completion shall not exceed five
30 "years from the date of said approval."

1 MR. ADAMS. The point is that it is an effort to force the
2 completion of a canal which may be laid out to irrigate one hun-
3 dred thousand acres, when only twenty thousand acres are ready
4 to be irrigated. The completion should be allowed to be grad-
5 ual and to meet the needs of the project; no company should be
6 compelled to invest such an amount of money in an irrigation
7 project to supply the work for one hundred thousand acres when
8 there may be not more than ten thousand acres ready for irriga-
9 tion and it may be ten years before there will be more than ten
10 thousand acres in irrigation; it would mean the completion of
11 work which would rapidly go to ruin. The Commission should
12 have discretionary power to determine whether the development
13 on the work is reasonable and when the work should be completed.

14 MR. BAUMGARTNER. Isn't it covered by the language here if we
15 would strike out that limit clause--"shall be prosecuted with
16 "due diligence in accordance with the terms of the approved ap-
17 "plication"?

18 MR. ADAMS. When a man makes an application, he files plans
19 and specifications showing just what he is going to build. Your
20 bill is drawn to compel him to make all that construction.

21 MR. BAUMGARTNER. I know, but strike out that, as I have said,
22 --"in accordance with the terms of the approved application".

23 MR. POOLE. Why shouldn't a period of time be fixed by the Com-
24 mission in accordance with the magnitude and nature of the
25 project?

26 PROFESSOR MARX. That is acceptable.

27 THE CHAIRMAN. We will consider it.

28 (Reading:) "The Water Commission, however, may, for good
29 "cause shown, extend the time within which said work shall be
30 "completed, but no such extension shall be for a longer period

1 "than one year."

2 MR. KEECH. Cut that out,-"but no such extension shall be
3 "for a longer period than one year".

4 THE CHAIRMAN. Very well, consider that; that may be if that
5 other change is made. (Continues reading:) " and if such work
6 "be not so commenced, prosecuted and completed as provided in
7 "this act, the Water Commission may, after due notice to the
8 "applicant, revoke its approval of the application, and imme-
9 "diately upon such revocation any priority of right under said
10 "application shall lapse."

11 Professor Marx will carry that in his mind and give us
12 suggestions on that.

13 (Reading:) "Section 29: Immediately upon completion,
14 "in accordance with the terms of the permit, of the project un-
15 "der such application, the holder of said permit shall report
16 "said completion to the Water Commission, which shall imme-
17 "diately thereafter cause to be made a full inspection and ex-
18 "amination of the works constructed and shall determine whether
19 "the construction and condition of the project are in conformi-
20 "ty with the terms of the approved application and permit, and
21 "shall, if said determination is favorable to the applicant,
22 "issue a license which shall give the right to the diversion of
23 "such water and the use thereof as may be necessary to fulfil
24 "the purpose of the approved application. Said license shall be
25 "in such form as may be prescribed by the Water Commission un-
26 "der the conditions of this act."

27 MR. KEECH. Shouldn't these licenses be recorded in the county
28 recorder's office? They are the titles; they should be accept-
29 able.

30 THE CHAIRMAN. Referred to Professor Marx.

1 PROFESSOR MARX. No objection to that so that there is a rec-
2 ord of the first application and a granting or refusal, as the
3 case may be.

4 MR. LOMBARD. Mr. Keech's purpose is to have a record in the
5 central office.

6 MR. POTTER. The resident in the county has a right to know
7 what has been appropriated, he has a right to know just the same
8 as if he was making an examination of the land titles.

9 PROFESSOR MARX. No objection at all to making that general
10 provision.

11 MR. KEECH. Just like the General Land Office; they are re-
12 corded in the General Land Office, and they are locally record-
13 ed; they are very valuable, these water rights, and they should
14 be where they can be searched.

15 PROFESSOR MARX. No objection.

16 THE CHAIRMAN (Reading) "Section 30: If the purpose of the
17 "use of water be for the generation of electricity, or electrical
18 "or other power, the license issued therefor shall be effective
19 "only for a period of forty years"-- the question of years is
20 left to be determined-- "and if the use of water be for any
21 "other purpose than the generation of electricity, or electrical
22 "or other power, such license shall be effective for such time
23 "as the water so appropriated is actually used for the benefi-
24 "cial purpose for which it was appropriated. If it shall ap-
25 "pear to the State Water Commission at any time after a license
26 "is issued to any person, firm association or corporation, as
27 "herein provided, that such person, firm association, or cor-
28 "poration has not put the water, or use of water, sought to be
29 "appropriated under said license to the useful and beneficial
30 "use for which it was appropriated, or has ceased to put said

1 "water, or use of water, to such useful or beneficial purpose,
2 "or has failed to observe any of the terms and conditions in
3 "the license as issued, then and in that case the said com-
4 "mission, after due notice to the licensee and a hearing there-
5 "on, may revoke said license and declare the water or the use
6 "of the water sought to be appropriated thereunder to be unap-
7 "propriated and open to further appropriation in accordance with
8 "the terms of this act."

9 MR. KEECH. I observe it doesn't specify as to the length of
10 time which shall constitute a cessation or abandonment. That
11 may be wise, because there are circumstances, owing to these
12 variations, these cycles of years, where a party might not need
13 to use the water one year or two or three, if you have it for
14 ten years, and then require it again and need it very badly.

15 THE CHAIRMAN. It is true there are certain years where they
16 can't use the water because it isn't there.

17 MR. KEECH. It is left here entirely in the discretion of the
18 Commission; it seems to me that is the only possible way.

19 MR. ADAMS. May I ask a question?

20 THE CHAIRMAN. Sure.

21 MR. ADAMS. Do I understand that anybody who wants to appro-
22 priate water should make an application to the Commission?
23 For instance, we will say that there is a farmer who lives fif-
24 ty miles away from a railroad and he wants to get a permit to
25 divert water; according to the terms of the law you can't act on
26 that possibly, according to your bill, until you make an in-
27 spection and see that he has the right; the Commission is not
28 going to be able to inspect all applications of that kind.

29 MR. GLAVIS. You do not inspect an application when received,
30 under your act; you inspect it after it has been made.

1 MR. ADAMS. I was thinking that the Commission would have these
2 men make proof as in land.

3 MR. GLAVIS. That opened the way for some of the land frauds
4 in the United States.

5 MR. ADAMS. I think it would be well to make it discretionary
6 with the Commission whether they would allow such proof or not.

7 PROFESSOR MARX. I wouldn't insert it there.

8 MR. KEECH. It occurs to me that the remarks used by the Com-
9 mission are very unfortunate, and that a provision should be
10 made somewhere in the bill for their printing and for the fur-
11 nishing to all applicants of them, for otherwise, those who de-
12 sire to take advantage of these might have to come to the of-
13 fice; I think it would be a good plan to have some forms pre-
14 scribed; perhaps you could have a little pamphlet printed and
15 it could be supplied to the people of the State; they should be
16 supplied one to each county clerk.

17 PROFESSOR MARX. We have done that.

18 THE CHAIRMAN. There is no objection to having that in the law,
19 then. But bear that in mind, Professor Marx. (Reading)

20 "Section 31: Every person, firm, association, or corpora-
21 "tion which shall have secured a license from said Water Com-
22 "mission for the purpose of generating electricity, or electrical
23 "or other power shall have a preference right to the renewal
24 "of said license upon such terms as the Water Commission may
25 "prescribe in accordance with law, and such license shall be
26 "renewed upon application therefor unless the licensee shall
27 "have failed to comply with the terms and conditions thereof or
28 "of this act, or unless the State, in any manner hereafter au-
29 "thorized, shall determine to acquire such right for its own
30 "use; provided, that any application for renewal of such license

1 "shall be filed with the Water Commission at a time not less .
2 "than six months nor more than one year prior to the expira-
3 "tion of the time specified in the license. And provided, fur-
4 "ther, that no such renewal shall be for a longer period than
5 "twenty years.

6 "Section 32; License hereafter granted for water or
7 "the use of water shall be subject to the right of the State to
8 "impose the fees and charges herein provided.

9 "Section 33: Every person, firm, association or cor-
10 "poration making application for permission to appropriate
11 "water of the use thereof under this act shall pay to the State
12 "Water Commission, at the time of filing said application, a fee
13 "of two hundred and fifty (250) dollars if the purpose of use
14 "is for the generation of electricity, or electrical or other
15 "power, or a fee of ten (10) dollars if the purpose be other than
16 "for the generation of electricity, or electrical or other power.
17 "Every person, firm, association or corporation at the time of
18 "receiving a license to appropriate water or the use of water,
19 "if the purpose be for the generation of electricity, or elec-
20 "trical or other power, as provided by this act, shall pay said
21 "Commission when the said license is issued, and annually there-
22 "after, a charge of twenty (20) cents for each theoretical horse
23 "power capable of development by the proposed works. If the
24 "purpose or use is for other than the generation of electricity ,
25 "or electrical or other power, every person, firm, association,
26 "or corporation, shall pay to the said commission when said li-
27 "cense is issued, and annually thereafter, a charge of twenty-
28 "five (25) cents per miner's inch for each miner's inch speci-
29 "fied in the license, and for the purpose of this act fifty
30 "miner's inches shall be equivalent to one cubic foot per second".

1 There has been some criticism made of the two hundred
2 and fifty dollars, that it wasn't enough; that for a bona fide
3 fee one thousand or fifteen hundred dollars should be paid; one
4 man even went as high as five thousand dollars; he was, him-
5 self, about to apply; he said he would feel a good deal better
6 if everybody applying for a power permit would have to pay
7 five thousand dollars.

8 MR. GLAVIS. We believe that two hundred and fifty dollars
9 would be all right.

10 MR. KEECH. Why not fix that according to the horse-power?

11 THE CHAIRMAN. We thought a fixed fee would be better.

12 MR. BAUMGARTNER. Wouldn't there be any hardship worked on
13 possibly an applicant for small power plants by a big fee like
14 that?

15 THE CHAIRMAN. If it were five thousand dollars, yes.

16 MR. POTTER. That would be prohibitive in some cases.

17 THE CHAIRMAN. This five thousand dollar man was merely il-
18 lustrating what he was after, that it would be sufficiently
19 large to protect him from other applicants.

20 THE CHAIRMAN. Fix it at a fixed fee, then you have it without
21 a great amount of work.

22 MR. KEECH. Mr. Chairman, it seems to me there is a large
23 class of small generators of electricity, men who have farms
24 and use electricity in a small way, they use twenth-five horse-
25 power; they might very economically get their application and
26 that sum would almost be prohibitive, they would almost be pro-
27 hibited by these rates. That is the reason I suggested--

28 MR. BAUMGARTNER. The \$250 rate?

29 MR. KEECH. Yes, the \$250 rate. I dont know how chsaply a
30 plant can be put in, I am not an expert in that line, but it

1 just occurred to me that that might be the situation.

2 THE CHAIRMAN. If he is making application for an appropriation
3 to use water on his land, I think that a fee of something like
4 \$250 in each case should be charged. If a man has a little
5 plant, right on his own land, and take the use of that stream,
6 nobody is going to interfere with him.

7 MR. KEECH. I was speaking of electricity.

8 THE CHAIRMAN. I was speaking of electricity also; and-sup-
9 posing that there was a little stream and he would go four, or
10 five, or ten miles and dig a ditch to bring that water down.

11 MR. KEECH. No.

12 THE CHAIRMAN. On his own land?

13 MR. KEECH. On his own land; and the idea is that the Com-
14 mission wouldn't interfere with him?

15 THE CHAIRMAN. Nobody would bother him at all.

16 MR. KEECH. As to the miner's inches, every engineer in the
17 State says fifty; the law says forty.

18 PROFESSOR MARX. The law says fifty.

19 MR. POTTER. Why not say "second feet"?

20 MR. KEECH. There is no doubt about second feet. I have found
21 an engineer that will swear that forty miner's inches make a
22 cubic foot.

23 PROFESSOR MARX. I think it would be better in second feet my-
24 self.

25 THE CHAIRMAN. Well, we will take that up afterwards.

26 (Reading) "Section 34: For the purpose of carrying out
27 "the provisions of this act the said Water Commission is author-
28 "ized to pass such necessary rules as it may from time to time
29 "deem advisable, and to appoint a secretary who shall have
30 "charge of the books and records of said Water Commission and

1 "perform such other duties as the Commission may from time to
2 "time prescribe, and said Water Commission may also employ such
3 "expert, technical, professional and clerical assistance, and
4 "upon such terms, as it may deem proper. And for the purpose of
5 "carrying out the provisions of this act the sum of one hundred
6 "and fifty thousand dollars is hereby appropriated out of any
7 "money in the state treasury not otherwise appropriated, and the
8 "State Controller is hereby authorized and directed to draw his
9 "warrants from time to time upon the requisition of the State
10 "Water Commission, approved by the State Board of Control, and
11 "the State Treasurer is hereby authorized and directed to pay
12 "such warrants."

13 This is simply to give the Commission funds with which
14 to act; we don't want to be dependent upon the legislature.

15 (Reading:) "Section 35: All indebtedness incurred for
16 "salaries, and all necessary costs in traveling and other ex-
17 "penses of said Commission, and each of its members and persons
18 "employed by it, while actually engaged in the business of said
19 "commission, shall be paid by the state out of the funds here-
20 "by appropriated, upon the sworn statement of the person or per-
21 "sons incurring such indebtedness, and upon the approval of the
22 "Water Commission, approved by the State Board of Control, and
23 "the State Controller is hereby authorized to draw warrants up-
24 "on the State Treasurer as provided by law for the payment of
25 "similar costs and expenses and the drawing of similar warrants.

26 "Section 36: None of the provisions of this act, ex-
27 "cept as hereinafter provided, shall apply to any city, city and
28 "county, municipal water district, or lighting district, nor to
29 "the appropriation or use of the waters of the state by any city,
30 "city and county, municipal water district, or lighting district

1 "provided, however, that every city, city and county, municipal
2 "water district, and lighting district shall, within thirty days
3 "from the time that it posts and records notices of appropriation
4 "as required by law, file with the Water Commission a notice of
5 "said appropriation, together with the post-office addresses of
6 "the appropriator, the source of the water to be appropriated or
7 "used, the nature and amount of the proposed use, the head or
8 "amount of water to be utilized, the uses to which the waters are
9 "to be applied, the nature, location, character and estimated
10 "capacity of the works, and whether the water is to be and will
11 "be returned to the stream or source from which it is to be
12 "taken, and if so, at what point on such stream or source. If
13 "the construction contemplates a reservoir for the purposes of
14 "storing water for the use of any city, city and county, mu-
15 "nicipal water district, or lighting district, the notices filed
16 "with the Commission shall also give the estimated height of
17 "the dam and estimated capacity of the reservoir in addition to
18 "the other requirements above set forth; and provided also
19 "that any city, city and county, municipal water district, or
20 "lighting district may participate in any of the investigations
21 "herein provided for, involving a right to appropriate or use
22 "any of the waters of the state, when such investigation affects
23 "the rights or claims of any such city, city and county, munic-
24 "ipal water district, or lighting district; and in such case any
25 "such city, city and county, municipal water district, or light-
26 "ing district, the rights of which are so affected, shall be
27 "served with notice in the same manner as herein provided for
28 "the serving of notice upon persons, associations and corpora-
29 "tions.

30 "Section 37: All other acts or parts of acts in con-

1 flict herewith are hereby repealed."

2 MR. POTTER: I have in mind the City of Los Angeles, it is
3 taking water and developing power two hundred and sixty miles
4 away from the city; I understand, not only for municipal pur-
5 poses, but they propose to develop power by the use of water
6 not necessary for the use of municipal purposes, get other pow-
7 er and go into the market and sell it to other consumers in dis-
8 tant counties.

9 It occurs to me, in reading this section, that if
10 the City of Los Angeles engaged in a business which is not with-
11 in the organized province of municipal business— that is, if it
12 engages in a mercantile business and enters the field with
13 other competitors, with other power companies, and is excused
14 from the payment of license fees and annual fees and other
15 fees which are exacted by the terms of this bill, how does
16 that place the City of Los Angeles as a seller of electric pow-
17 er as compared with other companies, with companies that are en-
18 gaged in that business?— it gives the city an immense advan-
19 tage.

20 THE CHAIRMAN. Undoubtedly.

21 MR. POTTER. That's the way it strikes me.

22 MR. CHAIRMAN. No doubt of it.

23 MR. POTTER. It strikes me that it not only gives them an un-
24 due but an unjust advantage. In different parts of the State,
25 small stockholders have invested their money in stock in the
26 power companies, with the expectation that the company will have
27 at least an even break in the development of its power and the
28 selling of the power; and that company is, by the Public Utili-
29 ties Board, subjected to a regulation rate and it is obliged
30 to go into the market alongside of a city project, the city it-

1 self being located two or three hundred miles away, and the city
2 is exempted from the requirements of law which are placed upon
3 the other company. Is it just to those stockholders to exempt
4 a municipal corporation from the payment of the same dues and
5 the same fees that are exacted from a company in legitimate
6 business? I look at the equity of it.

7 THE CHAIRMAN. We have looked at that too and considered it
8 very carefully; but it requires very careful legislation.

9 MR. CUTTLE. Would it make a particle of difference if you
10 imposed the same fees to be paid by the city as paid by the
11 corporation? Would it make a particle of difference in the de-
12 velopment of power by the municipality for the reason that they
13 are in no way concerned whether they are making a profit or not
14 as a private corporation would be?

15 MR. POTTER. That's right. They are compelling their own tax-
16 payers, including the stockholders in other companies, they are
17 compelling the stockholders in the other companies to pay taxes
18 to support a rival concern.

19 THE CHAIRMAN. Here is another point, in the same class of ob-
20 jections: All that a city has to do is to file an application
21 with the Commission and the Commission has no power to restrict
22 or reject the application, or anything else; and the thought
23 occurs to me--

24 MR. POTTER. I don't think the city should be taxed or com-
25 pelled to pay for any use that is intended for the direct bene-
26 fit of its inhabitants-- that is, for municipal purposes; but,
27 in my judgment, it is inequitable for a city to claim exemption
28 where it goes outside two or three hundred miles away and gets
29 this power and goes into a business that is entirely separate
30 from a municipal proposition;-- shouldn't it as well build a

1 shoe-shop or factory and compel the taxpayers who may be there
2 in the same business, who may be running a shoe factory, to pay
3 taxes to support that? That is the thought that comes to me
4 here.

5 THE CHAIRMAN. We had that question up with the legislature a
6 year ago and we ran up against San Francisco and Los Angeles,
7 and there was an old decision which covered the question very
8 clearly; but I believe that by recent legislation that was de-
9 clared unconstitutional.

10 PROFESSOR MARX. The Commission have no intention to have that
11 clause included; but it is in the old bill, and as the Chair-
12 manstates, there is very little likelihood that we would be
13 able to carry through a water bill which does not provide for
14 an exemption.

15 MR. POTTER. It would appear that something might be put into
16 that bill that would exempt the city, except where the project
17 was for something outside of municipal work.

18 THE CHAIRMAN. Suppose you would do that, they wouldn't stand
19 for that. We ran up against minicipal lighting districts out-
20 side-- we had a long wrangle with them on that; they just
21 served notice on us.

22 MR. BAUMGARTNER. Los Angeles is going into this irrigating
23 business?

24 THE CHAIRMAN. Yes sir.

25 MR. KEECH. There is some advantage in excepting them from this
26 provision. It seems to me they don't get the benefits. All of
27 the proceedings of the Commission and their resultant determin-
28 ation are for the benefit of all; but they are entirely ex-
29 cepted from the provisions of the act; therefore, it isn't law
30 as to them, and therefore they simply step out and have none of

1 the benefits nor none of the burdens of the provisions of the
2 act, as I understand it, and that is just, and it may be it is
3 pretty nearly an even thing.

4 MR. POTTER. I don't understand they are exempted from the bene-
5 fits.

6 MR. KEECH. Well, it says, one of the provisions of the act
7 says, "None of the provisions of this act, except as herein-
8 after provided" -- and so forth (reading section 36). The law
9 relates to them, and they are all of them subject to the law in
10 their public capacity; and, therefore, whatever advantage they get
11 is the advantage if the public, and for that reason such an ex-
12 ception is views, I think, with leniency, and it should
13 be.

14 The appropriation for the City of Los Angeles should
15 I think be viewed with favor. In the first place, it is not
16 for the primary purpose of going into the business in competition
17 with any private owners at all more than the probable require-
18 ments of that city will be within the next decade; they
19 have got to have water. I have observed our plants there as
20 outlined, and that actually the city will, by those arrangements,
21 use the water within ten years -- in fact, the difficulty seems
22 to be that they can't furnish enough; the suburbs of the city will
23 require a lot of water and the suburbs will be increasing all the
24 time. The electricity is purely an incident;
25 it was not intended for that; it was simply to utilize the sys-
26 tem they are introducing, to go into the market not so much to
27 make money as to protect their own city, and I don't think
28 there will be any tendency for them to do anything more than
29 utilize the product. I think the Commission will fix the rate
30 for the private corporation at a reasonable amount and the city

1 will simply follow suit and charge the same rates, probably,
2 and compete on a fair basis; it is simply getting the profit
3 for the liquidation of our bonds and the benefit of our own citi-
4 zens; and I believe it will be helpful, and, on the whole, equit-
5 able. Whether or not it will be, we can't get it out of the
6 bill.

7 MR. POTTER. I agree with him so far as he goes, but I think
8 he is wrong, in this: it would be improvident for the City of
9 Los Angeles to carry its water down into the County of Los An-
10 geles and develop its power, a whole lot of power, and allow
11 that power to go to waste. It is in the interests of economy
12 that they use that power and use it for municipal purposes, and
13 if they can't use it for municipal purposes they will have to
14 dispose of it some way. The point I make is that I understand
15 that some of these things-- and I am sure Los Angeles is an ex-
16 ample-- only, my point is that, as I understand it, it is con-
17 templated by some of those cities to go away north of the con-
18 templated source of supply of water for municipal purposes and
19 utilize certain appropriations which they have got there for
20 a commercial use-- those water appropriations solely for the
21 development and sale of power outside of the city.

22 PROFESSOR MARX. They come under this bill.

23 MR. POTTER. I say that they should not be allowed to go up
24 three hundreds of miles beyond the source of their supply and
25 develop power which cannot be used for any purpose on earth
26 for the next twenty years except to sell to outside parties--
27 I say that is unjust, but you can't get away from it, and they
28 should be required to comply with the law of the State and pay
29 their taxes.

30 MR. ADAMS. Is it the intention of the Commission to insert

1 anything in this bill requiring that water for which a permit
2 has been issued shall be used?

3 THE CHAIRMAN, Yes, so long as the water is used for beneficial
4 purposes.

5 MR. KEECH. Mr. Chairman, we are very thoroughly devoted to the
6 relation of the water with the land in our part of the State;
7 but that is a matter of substantive law, it is a matter of
8 definition of law which already exists; and I should doubt the
9 advisability of entering upon the subject unless it was careful-
10 ly considered and thought about. I do believe that there might
11 be a possible improvement in the present law, but I should doubt
12 the advisability of going into the subject now.

13 MR. POTTER. If we have a later meeting we will have some-
14 thing more to offer on the bill then, we will have an oppor-
15 tunity to do that then.

16 MR. LOMBARD. We have been criticizing the bill for what it
17 has not done; I would like to criticize the bill for what it has
18 done. There is the proposition of excessive use. Shouldn't
19 it be in the bill that a man should not misuse water? Isn't
20 that within the functions of the Commission?

21 THE CHAIRMAN. You are correct; that is entirely in accordance
22 with the views of the Commission.

23 MR. CUTTLE. My position is this: that no Commission or commis-
24 ioners or agent of such Commission or commissioners should
25 have the power to determine the amount of water that a user
26 uses upon his land; and for this reason: a man who has irrigat-
27 ed his lands for years knows more about the water that is nec-
28 essary to raise crops on that land than any commissioner or
29 agent of a commissioner or commissioners can possibly know ; and
30 while he might, as you say, at times indulge in the excessive

1 use of water, and possibly to the detriment of the land, yet
2 for some outside person to come in there and say that he must
3 use just so much water on that land would be to confiscate his
4 private property. For instance, I know of where we were at one
5 time using one inch of perpetual flow of every acre of land
6 which we had in alfalfa, and you would say that that was ex-
7 cessive; and in getting that water we pumped it from one hundred
8 to one thousand feet high to get it on that land. You could
9 take that same amount of water and irrigate twice as much land
10 in a great many places, and I am pumping that water from quite
11 a distance; and every day I am pumping more water than I be-
12 lieve necessary, and yet within five miles of there there
13 are thousands of acres irrigated with just half the amount of
14 that water, and successfully irrigated. So I say that those
15 people who have developed that land, and placed trees and so
16 forth, know more about it to-day, know more about the water
17 than any commissioner can know.

18 THE CHAIRMAN. The Commission finds itself up against an in-
19 superable barrier in regard to that; and we want all the dis-
20 cussion you have on it, Half a loaf is better than no loaf
21 at all, and then after a while we will get it all into the bill.

22 MR. LOMBARD. This general proposition of law, a man must
23 so use his property as not to injure anybody else and still not
24 deprive him of any rights; and that is very hard when we try to
25 say that he must use just so much and not too much.

26 MR. CUTTLE. We are getting a lot where we are; we are doing
27 it under a heavy expense.

28 MR. LOMBARD. Where it costs 62-1/2 cents an acre it is easier
29 to flood the land .

30 MR. KEECH. Mr. Chairman, the amount of water depends not only

1 upon the surface soil but the sub-surface well and the amount
2 of saturation below, and as the water seeps through it will es-
3 cape to other parts. The facts stated by Mr. Lombard don't
4 show the excessive use of water at all. There is always a cer-
5 tain percentage that does escape, 25 to 70 per cent, accord-
6 ing to the best engineers that I have been able to get on the
7 stand; and that water seeks the lower levels, and it will come
8 out at some lower place.

9 THE CHAIRMAN. We can't do anything with this now.

10 MR. KEECH. Under the term "beneficial use", according to the
11 decisions in all irrigating cases, we should have exclusive use
12 of water, the beneficial use, and the excess so used is subject
13 to appropriation; and it is already in the bill, in spite of Mr.
14 Cuttle.

15 MR. LOMBARD. The proposition of storage rights, I don't find
16 anything in this bill which makes it clear that the man who
17 stores water from a stream is going to have that water.

18 THE CHAIRMAN. We find ourselves up against an inexplicable
19 tangle on that, and we have been unable to find our way out of
20 that.

21 PROFESSOR MARK. The only way we can do is to use each stream.

22 MR. LOMBARD. The proposition of pumping directly from the
23 stream, a man ought to get a direct appropriation for that as
24 well as getting it from a ditch. There are lots of men getting
25 it from the streams.

26 MR. CUTTLE. He can only do it as a riparian proprietor.

27 MR. LOMBARD. If we get as many people here as there are in
28 Italy there is going to be a big demand for drinking water.
29 There should be some way to divert that water to the highest
30 possible use.

1 MR. CUTTLE. There is a provision in here and includes that
2 it shall be for all domestic purposes.

3 MR. LOMBARD. The municipal supply would probably now be con-
4 sidered the highest use.

5 THE CHAIRMAN. Yes, so considered. The meeting will not stand
6 adjourned.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30